



INTERNATIONAL GUIDELINES ON  
Human Rights + Drug Policy

**COMMENTARY ON  
THE INTERNATIONAL  
GUIDELINES ON  
HUMAN RIGHTS AND  
DRUG POLICY**

## **About the International Guidelines on Human Rights and Drug Policy and this Commentary**

The International Guidelines on Human Rights and Drug Policy are the result of a partnership between HRDP and the United Nations Development Programme (UNDP), and a three-year international consultative process, to apply contemporary human rights legal standards to drug policy. Covering the entire supply chain, from supply to use, and grounded in basic human rights principles, the Guidelines address the catalogue of core internationally recognised rights, as well as drug policy themes (health, development, and criminal justice), and groups (children, women, indigenous people). The Guidelines highlight the measures that States should undertake or refrain from undertaking to comply with their human rights obligations, while taking into account their concurrent obligations under the international drug control conventions. They are intended as a normative reference for parliamentarians, diplomats, judges, policy makers, civil society organisations, and affected communities.

Developed alongside the Guidelines as part of the consultative process, this Commentary offers an expert analysis of the Guidelines. It provides the normative foundation for the Guidelines and articulates their reasoning and interpretation based on existing international human rights jurisprudence. The Commentary and associated references are also available on the interactive website where readers may search by specific drug control themes and other key words and follow links to source material, as well as following each Guideline: [www.humanrights-drugpolicy.org](http://www.humanrights-drugpolicy.org)

### **Disclaimer**

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### **Acknowledgements**

The Guidelines and its associated Commentary were produced thanks to the generous support of the Global Partnership on Drug Policies and Development, implemented by GIZ on behalf of the German Federal Ministry for Economic Cooperation and Development; the Swiss Federal Department of Foreign Affairs; and the United Nations Development Programme.

Thanks are also due to the Canadian HIV/AIDS Legal Network and Harm Reduction International for their collaboration in the development of the Guidelines; to the University of Essex, University of Rosario (Bogotá), the Centre for Human Rights and the Institute for International and Comparative Law in Africa of the University of Pretoria, and Asia Catalyst for their logistical and other in-kind support in putting together the global consultations; and to the International Network of People Who Use Drugs for convening a consultation with people who use drugs. Likewise, a word of thanks to Professor Carla Ferstman, Lisa Gormley, Dan Abrahamson, and Magdalena Sepúlveda Carmona for their peer review of the Guidelines and Commentary. A final word of thanks goes to the Joint United Nations Programme on HIV/AIDS, the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime, and the World Health Organization for their constructive engagement throughout the drafting process.

## **About the International Centre on Human Rights and Drug Policy**

Established in 2009, the International Centre on Human Rights and Drug Policy (HRDP) is an academic programme dedicated to developing and promoting innovative and high-quality human rights research and education on issues related to drug laws, policy, and enforcement. HRDP is based at the Human Rights Centre, University of Essex.

Citation: R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, *Commentary on the International Guidelines on Human Rights and Drug Policy (2023)*.

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# Table of Contents

<b>Introduction</b>	<b>5</b>
<b>I. Foundational Human Rights Principles</b>	
1. Human dignity	9
2. Universality and interdependence of rights	9
3. Equality and non-discrimination	9
4. Meaningful participation	12
5. Accountability and the right to an effective remedy	14
<b>II. Obligations arising from human rights standards</b>	
1. Right to the highest attainable standard of health	16
1.1 Harm reduction	19
1.2 Drug dependence treatment	22
1.3 Access to controlled substances as medicines	26
1.4. Human rights and a healthy environment	28
2. Right to benefit from scientific progress and its applications	30
3. Right to an adequate standard of living	32
4. Right to social security	36
5. Right to life	37
6. Freedom from torture, cruel, inhuman, or degrading treatment or punishment	42
7. Freedom from arbitrary arrest and detention	47
8. Right to a fair trial	52
9. Right to privacy	56
10. Freedom of thought, conscience, and religion	59
11. Right to enjoy cultural life	61
12. Freedom of opinion, expression, and information	62
13. Freedom of association and peaceful assembly	64
<b>III. Obligations Arising from the Human Rights of Particular Groups</b>	
1. Children	66
1.1 Prevention	67
1.2 Interventions for children who use drugs	68
1.3 Protection in the context of parental drug dependence	70
1.4 Protection from exploitation in the illicit drug trade	70
2. Women	71
2.1 Interventions for women who use drugs	73
2.2 Women, drug-related offences, and dependence on illicit drug economies	76
2.3 Women and illicit drug cultivation	79
3. Persons deprived of liberty	80
4. Indigenous peoples	84
4.1 Rights to self-determination; to lands, territories, and resources; and to conservation of lands	84
4.2 Right to free, prior, and informed consent	86
4.3 Rights to enjoy culture and to profess and practise religion	86

4.4 Right to traditional medicines and health practices	89
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#### **IV. Implementation**

1. Data collection	90
2. Human rights review and budget analysis	91
3. Obligation of International cooperation and assistance	92

#### **V. Treaty interpretation principles**

1. Harmonisation and simultaneous compliance with human rights obligations	94
2. Standards for limitations on rights	96

<b>References</b>	<b>98</b>
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# INTRODUCTION

Responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time. All aspects of this challenge have human rights implications.

The drugs issue cuts across the 2030 Agenda for Sustainable Development and multiple Sustainable Development Goals, including ending poverty, reducing inequalities, and, of course, improving health, with its targets on drug use, HIV, and other communicable diseases. Goal 16 on peace, justice, and strong institutions is particularly important, requiring attention to human rights across the Sustainable Development Goals. Since the late 1990s, United Nations (UN) General Assembly resolutions have acknowledged that ‘countering the world drug problem’ must be carried out ‘in full conformity’ with ‘all human rights and fundamental freedoms’.<sup>1</sup> This has been reaffirmed in every major UN political declaration on drug control since, and in multiple resolutions adopted by the Commission on Narcotic Drugs.<sup>2</sup> The reality, however, has not always lived up to this important commitment.

Sustainable, rights-based action on drug control requires shared standards from which to begin. Yet there remains a lack of clarity as to what human rights law requires of States in the context of drug control law, policy, and practice. The International Guidelines on Human Rights and Drug Policy are the result of a three-year consultative process to address this gap.

The Guidelines highlight the measures States should undertake or refrain from undertaking in order to comply with their human rights obligations, while taking into account their concurrent obligations under the international drug control conventions: the 1961 Single Convention on Narcotic Drugs (as amended); the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>3</sup> Critically, they do not invent new rights. They apply existing human rights law to the legal and policy context of drug control in order to maximise human rights protections, including in the interpretation and implementation of the drug control conventions.

The Guidelines are not a ‘toolkit’ for a model drug policy. Rather, they respect the diversity of States and their legitimate prerogative to determine their national policies in line with applicable human rights law. States always retain the freedom to apply more favourable human rights protections than those provided for under international law. The Guidelines are therefore a reference tool for those working to ensure human rights compliance at local, national, and international levels, be they parliamentarians, diplomats, judges, policy makers, civil society organisations, or affected communities.

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<sup>1</sup> See e.g., UN General Assembly, *Resolution 73/192: International Cooperation to Address and Counter the World Drug Problem*, UN Doc. A/RES/73/192 (2019).

<sup>2</sup> UN General Assembly, *Resolution S-20/2: Political Declaration*, UN Doc. A/RES/S-20/2 (1998), annex, preamble; *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*, High-Level Segment of the Commission on Narcotic Drugs, Vienna, 11–12 March 2009, UN Doc. E/2009/28-E/CN.7/2009/12 (2009), para. 1; UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), annex, preamble.

<sup>3</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) 520 UNTS 7515 (1961); Convention on Psychotropic Substances, 1019 UNTS 14956 (1971); Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988).

## Structure

Section I presents general cross-cutting, or ‘foundational’, human rights principles underpinning the Guidelines, which may be seen as applicable irrespective of the issue or specific right in question.

Section II sets out universal human rights standards in the context of drug policy, taking the rights in question as its starting point. The section includes a brief overview of each human rights standard and its relation to drug policy before identifying consequent State obligations and recommended measures for human rights compliance. It should be noted that the order of this section does not imply any hierarchy of rights. It begins with the right to health to reflect the health goal of the international drug control system.

Section III addresses human rights concerns arising out of drug policy as it affects a number of specific groups: children, women, persons deprived of their liberty, and indigenous peoples. These, of course, are not the only groups with specific human rights needs or concerns of relevance to drug policy. They are emphasised as a consequence of more developed law concerning their specific human rights in relation to drug policy. Many others also experience disproportionate harm, inequities, and intersecting forms of discrimination on grounds of race, ethnicity, nationality, migration status, disability, gender identity, sexual orientation, economic status, and the nature and location of livelihood, including employment as rural workers or sex workers. The universal rights described in these Guidelines apply equally to these individuals and groups.

Sections IV and V conclude by outlining general matters related to the implementation of human rights obligations and relevant principles of treaty interpretation.

The Guidelines have been designed to place human rights at the forefront. However, many readers may approach the Guidelines with a focus on a specific drug policy topic or theme, or may be unfamiliar with specific rights. To assist with navigating the Guidelines, Annex I provides three thematic reference guides for development, criminal justice, and health. Each thematic guide brings together the most relevant guidelines for each of these issue areas.

The Guidelines recognise the potential tensions between drug control and human rights obligations. Associated commentaries, to be available on an interactive website, will also include an analysis of the relationship between relevant human rights obligations and the obligations set out in the UN drug control conventions, where applicable. In doing so, the commentaries also highlight the potential for compatibility between the promotion of human rights and the stated object and purpose of the drug control conventions, that of promoting the ‘health and welfare of mankind’.

## Sources

The Guidelines are based on both ‘hard law’ and ‘soft law’ sources – those that are legally binding and those that are authoritative but not binding per se. With very few exceptions, the general descriptions of rights are drawn from binding treaty provisions. However, since very few human rights treaty provisions address drug control directly, and since the application of general rights to specific groups requires a more in-depth analysis, much of the guidance presented throughout the document is based on UN resolutions and declarations, the general comments and concluding observations of UN human rights treaty bodies, and the work of UN human rights Special Procedures. Findings of regional human rights courts and national courts are also cited. Such jurisprudence, which is binding for the relevant countries, is cited in the Guidelines as being persuasive of a particular application of a right. (See Annex II: [Methodology](#).)

## Terminology

Given the differing treaty obligations of States and the need to use both hard and soft law sources, not all parts of the Guidelines have equal strength. The Guidelines aim to clarify States' obligations and suggest human rights-compliant measures based on authoritative sources while taking care not to overstate binding international law. The word 'should' is therefore used throughout to reflect the authoritative sources underpinning the Guidelines, but without making claims as to binding law. In some cases, however, there is a clear legal standard that necessitates the stronger formulation of 'shall'. In some places, a permissive norm allows States to take steps that may be more human rights compliant. In these cases, the word 'may' is used.

## **Scope**

These Guidelines cannot address all areas of public international law that potentially intersect with drug policy or that relate to the illicit drug trade and State responses. States also need guidance with regard to other relevant international legal obligations, such as those deriving from civil aviation law, the law of the sea, and international humanitarian law applying to conditions of armed conflict. These, however, are beyond the scope of the Guidelines.

## **Interactive website**

This document is complemented by extensive commentaries and references. This longer version of the Guidelines will be available on an interactive website where readers may search by specific rights, drug control themes, and other key words, as well as follow links to source material.  
[www.humanrights-drugpolicy.org](http://www.humanrights-drugpolicy.org)



## I. Foundational Human Rights Principles: 1. Human dignity

Universal human dignity is a fundamental principle of human rights. It is from the inherent dignity of the human person that our rights derive. No drug law, policy, or practice should have the effect of undermining or violating the dignity of any person or group of persons.

### Commentary

The Universal Declaration of Human Rights provides that ‘the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.<sup>[4]</sup> ‘Dignity lends real meaning to human rights, and as such is inherent in any right protected by international human rights law’.<sup>[5]</sup>

## I. Foundational Human Rights Principles: 2. Universality and interdependence of rights

Human rights are universal, inalienable, indivisible, interdependent, and interrelated, including in the contexts of drug policy, development assistance, health care, and criminal justice.

A person’s involvement in drug-related criminality affects the enjoyment of some rights and specifically engages others. In no case are human rights entirely forfeited.

### Commentary

The Universal Declaration of Human Rights is based on an understanding that human rights are grounded in the inherent dignity of the human person and are therefore universal and inalienable. This means that irrespective of ethnicity, gender, social or other status, or lifestyle choice, ‘all human beings are born free and equal in dignity and rights’<sup>[6]</sup> and no one’s human rights can be taken away (some rights may be limited in certain circumstances, but this is quite different from those rights being removed; see Section V.2).

Human rights are also indivisible, interdependent, and interrelated.<sup>[7]</sup> ‘Indivisible’ means that all human rights – economic, social, cultural, political, and civil rights – must be treated equally, on the same footing, with the same emphasis. ‘Interdependent’ and ‘interrelated’ mean that the realisation of a given human right is closely related to and dependent on other human rights. For example, the obligation to ensure access to essential controlled medicines, such as methadone or buprenorphine to treat opioid dependence or antiretroviral therapy to treat HIV, is a core obligation of the right to health, which means that it must be guaranteed without delay.<sup>[8]</sup> Yet a number of factors, such as stigma, discrimination, and violence, often prevent people who use drugs from accessing these lifesaving medicines or even information about them.<sup>[9]</sup> In this context, ensuring the right to health is closely related to and dependent on the realisation of a number of other rights, including the rights to human dignity, non-discrimination, equality, freedom from torture and ill-treatment, privacy, and information.<sup>[10]</sup>

## I. Foundational Human Rights Principles: 3. Equality and non-discrimination

All persons have the right to equality and freedom from discrimination. This means that all are equal before the law and are entitled to equal protection and benefit of the law, including the enjoyment of all human rights without discrimination on a range of grounds (such as health status, which includes drug dependence).

**In accordance with this right, States shall:**

- i. Take all appropriate measures to prevent, identify, and remedy unjust discrimination in drug laws, policies, and practices on any prohibited grounds, including drug dependence.
- ii. Provide equal and effective protection against such discrimination, ensuring that particularly marginalised or vulnerable groups can effectively exercise and realise their human rights.

**To facilitate the above, States should:**

- iii. Monitor the impact of drug laws, policies, and practices on various communities – including on the basis of race, ethnicity, sexual orientation, gender identity, economic status, and involvement in sex work – and collect disaggregated data for this purpose.

**Commentary**

International and regional human rights instruments protect the right to equality and non-discrimination.<sup>[11]</sup> International law prohibits direct and indirect discrimination on a number of grounds, including age, sex, race, ethnicity, nationality, language, religion or conviction, political or other opinion, economic position, property status, birth status, marital status, disability, sexual orientation, gender identity, and social status or 'other status', including health status.<sup>[12]</sup>

Under international human rights law, discrimination constitutes any distinction, exclusion, restriction, preference, or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of rights. Discrimination also includes harassment and incitement to discriminate.<sup>[13]</sup>

The World Health Organization recognises drug dependence as a chronic, relapsing medical condition – that is, a health status.<sup>[14]</sup> Consistent with this recognition, the law in some jurisdictions extends anti-discrimination protections either explicitly or as a result of judicial interpretation to include protection against discrimination based on drug dependence.<sup>[15]</sup> In such jurisdictions, if drug dependence is considered in law to fall within the definition of 'a disability', the Convention on the Rights of Persons with Disabilities adds further protection against discrimination on this basis.<sup>[16]</sup>

Drug dependence may intersect with other grounds upon which individuals face discrimination, such as age, sex, race, ethnicity, nationality, religion, sexual orientation, gender identity, disability, HIV or other health status, and economic status, including involvement in sex work.<sup>[17]</sup> Drug laws, policies, and practices may also unfairly discriminate against specific groups, whether directly or indirectly. International human rights law requires States to adopt and pursue policies to address intersecting forms of discrimination and their compounded negative impacts and to remove laws and policies that have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms.<sup>[18]</sup>

The Convention on the Rights of Persons with Disabilities defines discrimination on the basis of disability as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with

others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation'.<sup>[19]</sup>

The Committee on Economic, Social and Cultural Rights has raised particular concern about the discriminatory impact of drug control efforts on people living in poverty, ethnic minorities, and other marginalised persons and has called for all necessary measures to prevent this outcome.<sup>[20]</sup> The Committee on the Elimination of Racial Discrimination has likewise raised concern about the associated practice of racial profiling by police and its harmful impact on indigenous peoples, people of African descent, and other ethnic minorities, and about disproportionately high rates of incarceration among indigenous persons and people of African descent resulting in part from over-policing and racially biased sentencing associated with drug policies. It has called for measures to address the root causes of over-representation of these populations at all levels of the justice system, from arrest to incarceration, such as eliminating poverty, providing better social services, reexamining drug policies, preventing racially biased sentencing through the training of judges, and providing evidence-based alternatives to incarceration for non-violent people who use drugs.<sup>[21]</sup>

The Committee on Economic, Social and Cultural Rights has also raised concern that fear of stigmatisation and discrimination prevents people who use drugs from seeking lifesaving health care and treatment<sup>[22]</sup> and enjoying their right to health on an equal basis with the rest of the population.<sup>[23]</sup> The Committee has also expressed concern about the high rate of HIV among people who use drugs, noting that fear of stigma keeps many people from seeking antiretroviral treatment, even when it is provided free of charge.<sup>[24]</sup> The Committee has thus recommended that States take measures to combat such stigma and discrimination by, inter alia, training police, social workers, child protection officers, and medical professionals; sensitising the public to the right to health of people who use drugs; and making sure that these individuals receive adequate medical treatment.<sup>[25]</sup>

The Working Group of Experts on People of African Descent has raised concern about the discriminatory nature and application of laws related to drug offences on people of African descent, which in turn contributes to disproportionately high incarceration rates for this population. It has called for government action to redress this grave issue.<sup>[26]</sup> The Working Group has also noted that in many countries, racial profiling 'has made people of African descent a targeted group in the so-called war on drugs', and it has called for 'an end to racism, racial discrimination, xenophobia, Afrophobia and related intolerance, including their manifestations in the adoption and implementation of international and national drug policies'.<sup>[27]</sup> The Special Rapporteur on minority issues has raised similar concern about the discriminatory application of criminal drug laws toward people of African descent, resulting in their over-representation in prison and lack of alternative options.<sup>[28]</sup> The Working Group on Arbitrary Detention has raised concern about the discriminatory targeting for arrest and detention of people of African descent, indigenous peoples, women, persons with disabilities, persons with AIDS, and lesbian, gay, bisexual, transgender, and intersex persons, and has encouraged States to take measures to prohibit these practices in their drug-control efforts.<sup>[29]</sup>

In addition, the Special Rapporteur on torture has emphasised the importance of ensuring non-discrimination and special protection for certain marginalised groups – such as people who use drugs – who face heightened vulnerability to abuse, neglect, and mistreatment. This is a critical component of the obligation to prevent torture and ill-treatment.<sup>[30]</sup>

Eliminating discrimination in practice sometimes requires States to adopt preferential measures to diminish or eliminate conditions that cause or perpetuate discrimination against groups who face

discrimination on prohibited grounds.<sup>[31]</sup> As long as such action is needed to correct discrimination, it is considered prima facie legitimate.<sup>[32]</sup>

The Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem (UN General Assembly Special Session 2016 Outcome Document) calls on States to ‘[e]nsure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention’.<sup>[33]</sup> Similarly, the Commission on Narcotic Drugs has encouraged UN Member States ‘to promote, among their relevant agencies and social service sectors, non-stigmatising attitudes in the development and implementation of scientific evidence-based policies related to the availability of, access to and delivery of health, care and social services for drug users’.<sup>[34]</sup>

## I. Foundational Human Rights Principles: 4. Meaningful participation

Everyone has the right to participate in public life. This includes the right to meaningful participation in the design, implementation, and assessment of drug laws, policies, and practices, particularly by those directly affected.

**In accordance with this right, States should:**

- i. Remove legal barriers that unreasonably restrict or prevent the participation of affected individuals and communities in the design, implementation, and assessment of drug laws, policies, and practices.
- ii. Adopt and implement legislative and other measures, including institutional arrangements and mechanisms, to facilitate the participation of affected individuals and groups in the design, implementation, and assessment of drug laws, policies, and practices.
- iii. Remove laws depriving people of the right to vote as a consequence of drug convictions.

### **Commentary**

International law guarantees the right to participate in public life on an equal basis with others.<sup>[35]</sup> The effective recognition, protection, and enjoyment of this right requires the complementary guarantee of the associated rights to freedom of opinion and expression and to freedom of peaceful assembly and association.<sup>[36]</sup> The right to participation is therefore a broad concept related to the exercise of political power, particularly legislative, executive, and administrative powers. It covers all aspects of public administration, including the formulation and implementation of policy at the international, regional, national, and local levels, as well as the rights to vote, to stand for election, and to engage in public service in one’s country.<sup>[37]</sup>

In general, any conditions on the exercise of participation rights should be ‘based on objective and reasonable criteria’, according to the Human Rights Committee. In particular, these rights should not be suspended, nor should individuals or groups be excluded from their exercise, ‘except on grounds which are established by law’ and are ‘objective and reasonable’.<sup>[38]</sup> Regarding modes of ‘direct participation’, no discriminatory distinctions should be made among citizens, nor should ‘unreasonable restrictions’ be imposed.<sup>[39]</sup>

UN human rights mechanisms have raised concerns about the harmful effects of drug laws on the right to participate in public life.<sup>[40]</sup> In some jurisdictions, for example, people with criminal convictions may be denied the right to vote. A substantial number of those disenfranchised for this

reason have been convicted of drug offences.<sup>[41]</sup> The Human Rights Committee maintains that the right to vote 'may be subject only to reasonable restrictions'. While certain restrictions – such as those based on minimum age – may be considered 'reasonable', other restrictions are not, particularly if they are discriminatory.<sup>[42]</sup> Moreover, States have an obligation to 'take effective measures' to ensure that all eligible voters can exercise that right, including by removing obstacles to voter registration.<sup>[43]</sup> The Committee is of the view that any suspensions of the right to vote based on criminal convictions must be proportionate and should not apply to the non-convicted who are in custody.<sup>[44]</sup> The Committee has also concluded that blanket denials of the right to vote to convicted prisoners and those serving a prison sentence do not meet requirements of the Covenant.<sup>[45]</sup> It has thus recommended that such restrictions on the right to vote be lifted, legislation denying convicted prisoners the right to vote be revised, and the right to vote be afforded to convicted prisoners and those serving a prison sentence.<sup>[46]</sup> Likewise, the right to stand for election should not be 'unreasonably' limited, and restrictions must be 'justifiable on objective and reasonable criteria' that may not include political opinion or 'unreasonable or discriminatory requirements'.<sup>[47]</sup> Therefore, election laws that do not comply with the above criteria – and particularly those amounting to unreasonable or disproportionate restrictions or to discriminatory restrictions on prohibited grounds – fall afoul of human rights standards.

Civil society organisations and affected individuals play an important role in the design, implementation, and assessment of laws, policies, and practices that affect them. In this context, the Committee on the Elimination of Discrimination against Women has recognised the important role that civil society organisations play in providing treatment and support services to women who use drugs and has recommended that adequate funding be provided to organisations carrying out this work.<sup>[48]</sup> The Working Group on Arbitrary Detention has highlighted the importance of involving health experts, civil society, and affected communities in the development of drug policy and in the determination of what constitutes success in drug treatment.<sup>[49]</sup> It has thus recommended that civil society, including drug users' associations, be afforded 'a meaningful consultative role in the design, implementation, monitoring and evaluation of drug policies' and be involved in drug policy development and determination of what constitutes success in drug treatment. The Human Rights Committee has recommended that States take measures to ensure these stakeholders' active, open, and transparent participation in public affairs.<sup>[50]</sup> The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance has called for States to ensure the legal and institutional protection of minorities' rights to representation and participation in public affairs.<sup>[51]</sup> Guidance from the Office of the UN High Commissioner for Human Rights, created at the request of the Human Rights Council, builds on this jurisprudence, recommending that efforts be made to create an enabling environment conducive to the exercise of the right to equal, meaningful participation by affected individuals and civil society organisations at all levels, with particular attention paid to promoting and ensuring the equal participation of those who are marginalised or discriminated against, including, among others, women and girls, young people, people with disabilities, indigenous groups, and people belonging to minority groups.<sup>[52]</sup> This includes identifying and notifying rights holders directly affected by, or who may have interest in, a proposed project, plan, law, or policy; providing timely, clear information relating to the decision making process; providing sufficient opportunity for rights holders to prepare and submit contributions; providing timely access to adequate, accessible, and necessary information to allow for their effective participation; and providing information on the outcome of the participatory process in a timely, comprehensive, and transparent manner. This also includes ensuring that civil society access to international forums is provided without discrimination of any kind; establishing permanent structures for the continuous participation of civil society actors; facilitating the timely issuance of visas; and making funds available to facilitate civil society's meaningful and equal participation in

international forums.<sup>[53]</sup> Guidance from the Office of the UN High Commissioner for Human Rights also recommends that States not impose undue restrictions on civil society access to funding from domestic, foreign, or international sources and recognises the protection of civil society organisations, including affected groups, from threats, attacks, reprisals, and acts of intimidation and open and honest interaction between public authorities and all members of society, including the most at risk of being marginalised or discriminated against, as important to secure the right to participation.<sup>[54]</sup>

The Sustainable Development Goals call for States to '[e]nsure responsive, inclusive, participatory and representative decision-making at all levels'.<sup>[55]</sup> The UN General Assembly Special Session 2016 Outcome Document also recognises that 'affected populations ... where appropriate, should be enabled to play a participatory role in the formulation, implementation and ... evaluation of drug control policies and programmes' and calls for the 'meaningful participation' of civil society organisations in drug-related health services.<sup>[56]</sup> States should also recognise that children are explicitly guaranteed the right to be heard in issues that affect them and should 'ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes'.<sup>[57]</sup>

## I. Foundational Human Rights Principles: 5. Accountability and the right to an effective remedy

Every State has the obligation to respect and protect the human rights of all persons within its territory and subject to its jurisdiction. Everyone has the right to request and receive information about how States have discharged their human rights obligations in the context of drug policy. Everyone has the right to an effective remedy in the event of actions and omissions that undermine or jeopardise their human rights, including where these actions or omissions relate to drug policy.

**In accordance with these rights, States should:**

- i. Establish appropriate, accessible, and effective legal, administrative, and other procedures to ensure the human rights-compliant implementation of any law, policy, or practice related to drugs.
- ii. Ensure that independent and transparent legal mechanisms and procedures are available, accessible, and affordable for individuals and groups to make formal complaints about alleged human rights violations in the context of drug control laws, policies, and practices.
- iii. Ensure independent, impartial, prompt, and thorough investigations of allegations of human rights violations in the context of drug control laws, policies, and practices.
- iv. Ensure that those responsible are held accountable for such violations in accordance with criminal, civil, administrative, or other law, as appropriate.
- v. Ensure that adequate, appropriate, and effective remedies and means of redress are available, accessible, and affordable for all individuals and groups whose rights have been found to be violated as a result of drug control laws, policies, and practices. This should include accessible information on mechanisms and processes for seeking remedies and redress, and appropriate means of ensuring the timely enforcement of remedies.
- vi. Take effective measures to prevent the recurrence of human rights violations in the context of drug control laws, policies, and practices.



## Commentary

Accountability in the context of human rights requires States' full and good-faith implementation of their human rights obligations. This means ensuring that all State officials, as well as any non-State actors empowered or delegated by the State to exercise elements of governmental authority in certain contexts, comply with the State's human rights obligations. States are also obligated to exercise due diligence to ensure that the private acts of non-State actors do not impinge on individuals' or groups' human rights. Such obligations require States to take appropriate legislative, administrative, and other measures to prevent violations; investigate and, where appropriate, take action against those responsible; provide equal and effective access to justice to those whose rights have been violated; and provide accessible, effective remedies to victims of human rights violations. [58] State obligations to prevent, investigate, punish, and remedy human rights violations extend to both State and non-State actors. [59]

The Human Rights Committee has recommended that accessible, effective remedies to vindicate rights 'be appropriately adapted so as to take into account the special vulnerability of certain categories of persons, including in particular children'. [60] The Committee has explained that the obligation to provide an effective remedy includes the obligation to make reparation to those whose rights have been violated; reparation can include, inter alia, restitution, compensation, rehabilitation, changes in laws and practices, guarantees of non-repetition, and bringing perpetrators of human rights violations to justice. [61] According to the Committee, in addition to explicitly guaranteeing legal assistance in criminal proceedings, States are encouraged to provide free legal assistance in other cases and in some cases may be obliged to do so to ensure the right to an effective remedy. [62] The Committee has also explained that the specific circumstances of the case should be taken into account when deciding on which measures of reparation are appropriate. For example, in some cases, the Committee has reached decisions that take into account the existence of a gender dimension or the world view of an indigenous group. [63] The Committee on the Elimination of Discrimination against Women has observed that providing 'free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law' is a crucial part of 'guaranteeing that justice systems are economically accessible to women'. [64] The Committee has thus recommended that States '[i]nstitutionalize systems of legal aid and public defense that are accessible, sustainable and responsive to the needs of women; and ensure that these services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes'. [65] The Charter of Fundamental Rights of the European Union provides that '[l]egal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'. [66]

The effective exercise of the right to a remedy requires States to ensure access to relevant information regarding violations, complaints processes, and reparation mechanisms. [67] The design and implementation of reparations programmes should be carried out in consultation with those whose rights have been violated. [68] Concerted efforts should be made to ensure the meaningful participation of women and minority groups in these consultations. [69]

UN human rights mechanisms have identified the need for accountability – including effective remedy – for human rights violations in the context of drug policy. For example, they have raised concerns about the torture and ill-treatment of adults and children in private and public drug detention centres, [70] calling on States to take all steps necessary to prevent and punish such violations and recommending that States ensure the prompt investigation of allegations and

establish independent mechanisms to receive complaints against alleged perpetrators and provide victims with redress.<sup>[71]</sup> The Special Rapporteur on extrajudicial, summary, or arbitrary executions and the Special Rapporteur on the right to health have condemned the alleged extrajudicial killings of suspected 'drug offenders', calling for these killings to be promptly and thoroughly investigated and for perpetrators to be brought to justice.<sup>[72]</sup> The UN General Assembly Special Session 2016 Outcome Document also calls on States not only to '[p]romote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings' but also to 'eliminate impunity' for human rights violations.<sup>[73]</sup> Similarly, the Sustainable Development Goals call on States to 'promote the rule of law at the national and international levels and ensure equal access to just for all'.<sup>[74]</sup>

## II. Obligations arising from human rights standards: 1. Right to the highest attainable standard of health

Everyone has the right to enjoy the highest attainable standard of physical and mental health. This right applies equally in the context of drug laws, policies, and practices.

**In accordance with this right, States should:**

- i. Take deliberate, concrete, and targeted steps to ensure that drug-related and other health care goods, services, and facilities are available on a non-discriminatory basis in sufficient quantity; financially and geographically accessible; acceptable in the sense of being respectful of medical ethics, cultural norms, age, gender, and the communities being served; and of good quality (that is, with a solid evidence base).
- ii. Address the social and economic determinants that support or hinder positive health outcomes related to drug use, including stigma and discrimination of various kinds, such as against people who use drugs.
- iii. Ensure that demand reduction measures implemented to prevent drug use are based on evidence and compliant with human rights.
- iv. Repeal, amend, or discontinue laws, policies, and practices that inhibit access to controlled substances for medical purposes and to health goods, services, and facilities for the prevention of harmful drug use, harm reduction among those who use drugs, and drug dependence treatment.

**In addition, States may:**

- v. Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.

### Commentary

The right to the highest attainable standard of physical and mental health is recognised in numerous international instruments.<sup>[75]</sup> The UN General Assembly and Human Rights Council have consistently reaffirmed this right, and UN human rights treaty bodies have elaborated upon its content.<sup>[76]</sup> The Commission on Narcotic Drugs has repeatedly reaffirmed the importance of the right to health in the development and implementation of national and local drug policies and practices,<sup>[77]</sup> as it is closely related to the object and purpose of the UN drug conventions in furthering the 'health and welfare of mankind'.<sup>[78]</sup> The UN General Assembly Special Session 2016 Outcome Document also



highlights the importance of ensuring the right to health, dedicating a chapter on demand reduction and related measures (including harm reduction interventions) and another on ensuring access to controlled medicines.<sup>[79]</sup>

Access to health goods, services, and facilities under the right to health is measured by the ‘AAAQ framework’, a standard developed within the UN human rights system that refers to availability, accessibility (defined as non-discrimination, physical accessibility, economic accessibility, and information accessibility), acceptability (with regard to age, gender, culture, and human rights compliance—that is, services must be non-discriminatory and non-stigmatising), and quality.<sup>[80]</sup> The quality element of the right to health requires that health facilities, goods, and services be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel and scientifically approved and unexpired drugs and hospital equipment.<sup>[81]</sup> The International Narcotics Control Board, which is the body tasked with overseeing States’ implementation of the UN drug conventions, affirms that the AAAQ framework clarifies obligations relating to drug treatment and access to controlled medicines as outlined in the drug control treaties.<sup>[82]</sup>

Given its complex nature and budgetary implications, the right to health is subject to the principle of ‘progressive realisation’. That is, States must take various measures over time to achieve the full realisation of this right for all. There remain, however, core minimum obligations that must be guaranteed without delay.<sup>[83]</sup> These core obligations include, among others, providing essential medicines as defined by the World Health Organization (several of which are also internationally controlled substances)<sup>[84]</sup> and ensuring access on a non-discriminatory basis, especially for vulnerable and marginalised groups, to those health goods, services, and facilities that are available.

#### *Underlying and social determinants of health*

As the Committee on Economic, Social and Cultural Rights has stated, the right to health is an inclusive right extending not only to timely and appropriate health care but also to ‘a wide range of socio-economic factors that promote conditions in which people can lead a healthy life’.<sup>[85]</sup> In this way the right to health supports attention to the ‘social determinants of health’, which drives global health work and underpins Sustainable Development Goal 3. For example, the Committee on Economic, Social and Cultural Rights has raised concern about stigma and discrimination directed against people who use drugs, as these social factors impede access to health services protected under the right to health.<sup>[86]</sup>

The Commission on Narcotic Drugs has called on UN entities and Member States to take measures to address the negative effects that social stigma related to drug use has on the availability, access, and delivery of health care and social services for people who use drugs.<sup>[87]</sup> The UN General Assembly Special Session 2016 Outcome Document likewise calls on States to ‘prevent social marginalization and promote non-stigmatising attitudes’ towards people who use drugs in an effort to facilitate access to treatment and care.<sup>[88]</sup>

The right to health further includes the right to certain services, goods, and commodities that are outside of health care but are nonetheless essential for health. These elements, referred to as the ‘underlying determinants of health’, include ‘food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment’.<sup>[89]</sup> Each is linked to related human rights (e.g., the right to adequate housing) and is also subject to the AAAQ framework and progressive realisation.

#### *Legal determinants: Criminalisation and health*

Legal frameworks can hinder or support health outcomes, and there is therefore increasing attention to the ‘legal determinants of health’.<sup>[90]</sup> In this context, the criminalisation of drug use and possession for personal use affects the realisation of the right to health.<sup>[91]</sup> The criminalisation of drug use and possession for personal use, as well as related law enforcement practices, can lead people who use drugs to be displaced from areas served by harm reduction programmes, thereby impeding their access to sterile syringes, opioid agonist therapy, and outreach workers. Such criminalisation can also increase risky behaviours – including the sharing of needles and syringes, hurried injecting, and the use of drugs in unsafe places – that are associated with HIV, viral hepatitis, and premature death due to overdose.<sup>[92]</sup> The stigma created or reinforced through punitive enforcement and treatment regimes (including targeted abuse and violence towards people who use drugs) and policing practices that include the use of excessive force may also increase the risk of physical and mental illness for people who use drugs.<sup>[93]</sup>

In addition, once a person has a conviction for a drug-related offence, they may face considerable obstacles in obtaining employment and may lose access to government benefits, such as basic income assistance, student loans, public housing, and food assistance, or may face difficulties travelling abroad. The Committee on Economic, Social and Cultural Rights, the Special Rapporteur on the right to health, the Working Group on Arbitrary Detention, and the Office of the UN High Commissioner for Human Rights have recommended the decriminalisation of drug use and possession for personal use as an important step towards fulfilling the right to health.<sup>[94]</sup> The UN system common position on drug control policy, adopted in November 2018, commits to ‘stepping up our joint efforts and supporting each other ... [t]o promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use’.<sup>[95]</sup> Twelve UN agencies have committed to supporting States in reviewing and repealing laws criminalising drug use and the possession of drugs for personal use, on the basis that they have been proven to have negative health outcomes and that they counter public health evidence.<sup>[96]</sup> In 2014, as part of its recommendations to increase HIV prevention, testing, and treatment for people who use drugs, the World Health Organization recommended that countries work towards the decriminalisation of drug use as a strategy to reduce incarceration and support access to HIV-related services for people who use drugs.<sup>[97]</sup>

The International Narcotics Control Board has raised concern that many State policies ‘to address drug-related criminality, including personal use, have continued to be rooted primarily in punitive criminal justice responses, which include prosecution and incarceration and as part of which alternative measures such as treatment, rehabilitation and social integration remain underutilized’.<sup>[98]</sup> At the same time, many States have come to see drug use and dependence as a public health issue requiring health-centred, not punitive, responses.<sup>[99]</sup> This is consistent with States’ obligations under the drug conventions, which require them to establish certain behaviours as punishable, subject to the constitutional principles of the State and the principle of proportionality.<sup>[100]</sup> The conventions thus do not oblige States to adopt a punitive response or to incarcerate those who commit minor drug-related offences, including possession of small quantities of drugs for personal use.<sup>[101]</sup>

The UN General Assembly Special Session 2016 Outcome Document also encourages States to provide ‘alternative or additional measures with regard to conviction or punishment’, mentioning the UN Standard Minimum Rules for Non-custodial Measures (also known as the Tokyo Rules), as a relevant standard to follow.<sup>[102]</sup>

### *Relationship to the UN drug control conventions*

Under the UN drug control conventions, States have an obligation to undertake demand reduction measures, which are measures aimed at the prevention of illicit drug use.<sup>[103]</sup> The drug control conventions do not prohibit harm reduction interventions – that is, policies, programmes, and practices aiming to minimise negative health, social, and legal impacts associated with drug use, drug policies, and drug laws.<sup>[104]</sup> Indeed, such interventions are consistent with the conventions' stated objective of protecting the health and welfare of mankind.

The UN drug control conventions grant some flexibility with respect to how States treat the possession and use of controlled substances in law, policy, and practice. To a limited degree, and subject to important caveats, these conventions require States Parties to adopt measures to criminalise the possession of controlled substances other than for medical or scientific purposes.<sup>[105]</sup> However, the conventions also note the importance of measures to protect the health of people who use drugs, requiring governments to 'take all practicable measures' to provide 'treatment, education, after-care, rehabilitation and social reintegration' of people who use drugs.<sup>[106]</sup> States may provide measures for treatment, education, rehabilitation, after-care, and social reintegration as alternatives to conviction or punishment for the possession, purchase, or cultivation of drugs for personal use and in 'appropriate cases of a minor nature'.<sup>[107]</sup> This flexibility is reflected in the UN General Assembly Special Session 2016 Outcome Document.<sup>[108]</sup> Therefore, even if such behaviours are considered illegal, they need not be subject to criminal or administrative punishment.

The UN drug conventions also contain sufficient flexibility to decriminalise possession and other activities related to the personal consumption of controlled substances, even if not for medical or scientific purposes. The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires only that each State Party establish criminal liability for the intentional 'possession, purchase or cultivation of drugs for personal consumption' that is 'contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention' (e.g., for non-medical or non-scientific use).<sup>[109]</sup> Furthermore, this obligation is subject to any 'constitutional limitations' of the State Party.<sup>[110]</sup> and to the 'constitutional principles and basic concepts of [the State Party's] legal system'.<sup>[111]</sup> States therefore have the latitude to determine whether imposing criminal liability or sanctions for possession, purchase, or cultivation for personal consumption contravenes constitutional provisions – such as the right to privacy or the right to health – or otherwise offends against the basic concepts of their legal system, including basic concepts of criminal law.

## II. Obligations arising from human rights standards: 1.1 Harm reduction

The right to health as applied to drug policy includes access, on a voluntary basis, to harm reduction services, goods, facilities, and information.

**In accordance with their right to health obligations, States should:**

- i. Ensure the availability and accessibility of harm reduction services as recommended by UN technical agencies such as the World Health Organization, UNAIDS, and the UN Office on Drugs and Crime, meaning that such services should be adequately funded, appropriate for the needs of particular vulnerable or marginalised groups, compliant with fundamental rights (such as privacy, bodily integrity, due process, and freedom from arbitrary detention), and respectful of human dignity.
- ii. Consider the development of other evidence-based interventions aimed at minimising the adverse health risks and harms associated with drug use.

- iii. Remove age restrictions on access to harm reduction services where they exist, and instead ensure that in every instance in which a young person seeks access to services, access is determined based on the best interests and evolving capacity of the individual in question.
- iv. Exclude from the scope of criminal offences, or other punitive laws, policies, or practices, the carrying and distribution of equipment, goods, and information intended for preventing or reducing the harms associated with drug use, ensuring also that criminal conspiracy laws do not capture people using drugs together for this purpose.
- v. Ensure that any law prohibiting the ‘incitement’ or ‘encouragement’ of drug use contains safeguards protecting harm reduction services, excluding from liability those who provide information, facilities, goods, or services aimed at reducing harms associated with drug use.
- vi. Ensure that victims of, or witnesses to, an overdose or other injury occurring as a result of drug use are legally protected against criminal prosecution and other punishment in situations in which they have sought medical assistance for the overdose or injury.

## Commentary

Opioid agonist therapy and needle and syringe programmes are part of the core package of harm reduction interventions to prevent the transmission of HIV, viral hepatitis, and other blood-borne diseases, as developed jointly by the World Health Organization, Joint United Nations Programme on HIV/AIDS, and UN Office on Drugs and Crime<sup>[112]</sup> and endorsed by the UN General Assembly,<sup>[113]</sup> Economic and Social Council,<sup>[114]</sup> and Commission on Narcotic Drugs. In particular, the Commission on Narcotic Drugs has highlighted the importance of these interventions to meet Sustainable Development Goal targets to end the AIDS and tuberculosis epidemics and to combat hepatitis by 2030.<sup>[115]</sup> The International Narcotics Control Board has also recognised the efficacy of supervised injection facilities, or ‘drug consumption rooms’, as an intervention to reduce the adverse health and social consequences of injection drug use,<sup>[116]</sup> citing research concluding that such services succeed in attracting hard-to-reach populations, promoting safer injections, reducing the risk of overdose, and decreasing public drug injections, discarded syringes, and other drug-related litter in the community.<sup>[117]</sup> The Board has stated that in order for these facilities to be consistent with the international drug control conventions, their ultimate objective ‘should be to reduce the adverse consequences of drug abuse without condoning or encouraging drug use and trafficking’.<sup>[118]</sup> To this end, the Board has called on States to ensure that these facilities ‘provide or refer patients to treatment, rehabilitation and social reintegration services ... [which] must not be a substitute for demand reduction programmes’.<sup>[119]</sup>

In addition to the above harm reduction measures, the World Health Organization has developed guidelines for the treatment of opioid dependence that recommend making the essential medicine naloxone available for the management of opioid overdose<sup>[120]</sup> and providing people likely to witness an overdose and other first responders, including people who use opioids, their peers and family members, and police and emergency services, access to naloxone and instruction on its administration and use.<sup>[121]</sup>

Guidance issued by the UN Office on Drugs and Crime, World Health Organization, United Nations Development Programme, Joint United Nations Programme on HIV/AIDS, International Labour Organization, and UN Population Fund recommends further that naloxone ‘be made available to people held in prison, prison staff and other people in prisons and other closed settings who might witness an opioid overdose’ and that it be provided to prisoners ‘upon release from prison to prevent post-release overdose deaths’.<sup>[122]</sup> World Health Organization guidelines on naloxone have also

been endorsed by the Commission on Narcotic Drugs<sup>[123]</sup> and the UN General Assembly Special Session 2016 Outcome Document.<sup>[124]</sup> The Committee on Economic, Social and Cultural Rights has made similar recommendations calling on States to provide essential medicines as part of their core obligation under the right to health.<sup>[125]</sup>

States have a legal obligation to provide such harm reduction services to progressively realise the right to health<sup>[126]</sup> and to ensure that people who use drugs may equally benefit from scientific progress and its applications.<sup>[127]</sup> Ensuring access to harm reduction services is also critical for protecting the right to life. The Human Rights Committee has explained that the right to life 'should not be interpreted narrowly' and that governments 'should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity', including 'the prevalence of life-threatening diseases, such as AIDS'.<sup>[128]</sup>

UN human rights treaty bodies have repeatedly called on States to adopt and implement culturally appropriate and gender-sensitive harm reduction services, such as opioid agonist therapy and needle and syringe programmes,<sup>[129]</sup> to ensure access to these services in prison,<sup>[130]</sup> and to consider the decriminalisation of drug use and possession for personal use<sup>[131]</sup> in order to meet their obligations to protect the right to health. The Committee on the Elimination of Discrimination against Women has raised particular concern about the significant legislative and administrative barriers that women face in accessing supervised consumption services, calling for the removal of such barriers and the establishment of transparent processes to permit supervised consumption services without risk of criminal prosecution of clients or service providers.<sup>[132]</sup> As the Committee on the Rights of the Child has repeatedly clarified, children who use drugs also have the right to harm reduction services that are targeted to and appropriate for their needs.<sup>[133]</sup>

The Committee on Economic, Social and Cultural Rights has raised concern about law enforcement agencies' harassment of people who use drugs and of providers of harm reduction services, as well as the arbitrary detention of methadone programme participants.<sup>[134]</sup> The Committee has also raised concern about discrimination against people with drug dependence in access to health services, 'including by being asked for informal payments'.<sup>[135]</sup> The Committee has recommended that States monitor and sanction such discrimination, increase full access to free, adequate opioid agonist therapies respecting patient dignity, and ensure that people with drug dependence and harm reduction providers not be subjected to harassment or arbitrary detention by authorities.<sup>[136]</sup>

The Committee on Economic, Social and Cultural Rights has moreover called for the repeal of legislative prohibitions on distributing or carrying drug paraphernalia, as such prohibitions impede HIV prevention services.<sup>[137]</sup> This follows the International Guidelines on HIV/AIDS and Human Rights, which recommend that States review their criminal legislation and consider the authorisation or legalisation of needle and syringe exchange programmes and the repeal of laws criminalising the possession, distribution, or dispensing of needles and syringes, as such laws impede efforts to prevent HIV and to provide HIV-related care and treatment for people who inject drugs.<sup>[138]</sup>

The Working Group on Arbitrary Detention has called for the decriminalisation of the use, possession, acquisition, and cultivation of drugs for personal use and of the possession of drug paraphernalia.<sup>[139]</sup> In this context, it has also noted that positive, evidence-based messages, shared via media and other publicly accessible resources, may help reduce stigma and promote a better understanding of health and other benefits of decriminalisation.<sup>[140]</sup>

The Special Rapporteur on the right to health has recommended that harm reduction services, including opioid agonist therapy, needle and syringe programmes, naloxone distribution, and overdose prevention sites, which are essential for the protection of the right to health of people who use drugs, be acknowledged as key services in the context of the COVID-19 pandemic and thus remain available, accessible, acceptable, and of adequate quality without discrimination.<sup>[141]</sup> The Special Rapporteur has recommended that harm reduction service providers be recognised as workers providing key services and that exceptional measures, including the adequate provision of personal protective equipment, be taken to ensure that they operate in a safe environment.<sup>[142]</sup> According to the Special Rapporteur, harm reduction services should reach people where they are, particularly in the context of heightened isolation and lockdowns; to this end, peer distribution and home delivery (to prevent further strain on national health systems) should be made available.<sup>[143]</sup> Gender-sensitive harm reduction services should remain operational and adequately equipped.<sup>[144]</sup>

The Special Rapporteur has recommended that access to adequate personal protective equipment and essential services without discrimination and fear of harassment or repercussions be ensured and that national authorities provide necessary guidance to law enforcement agencies to permit the implementation of harm reduction services.<sup>[145]</sup>

The Special Rapporteur has also called for the funding of harm reduction and related services to be safeguarded, recognising that additional funding may be needed to support exceptional measures for these services.<sup>[146]</sup>

#### *Relationship to the UN drug control conventions*

As set out above, the drug control conventions do not prohibit harm reduction interventions.<sup>[147]</sup> Indeed, such interventions are consistent with the conventions' stated objective of protecting the health and welfare of mankind.

## **II. Obligations arising from human rights standards: 1.2 Drug dependence treatment**

The right to health as applied to drug policy includes access to evidence-based drug dependence treatment on a voluntary basis.

#### **In accordance with their right to health obligations, States should:**

- i. Ensure the availability and accessibility of drug treatment services that are acceptable, delivered in a scientifically sound and medically appropriate manner, and of good quality (that is, with a strong evidence base and independent oversight). This means that such services should also be adequately funded; appropriate for particular vulnerable or marginalised groups; compliant with fundamental rights (such as to privacy, bodily integrity, due process, and freedom from arbitrary detention), and respectful of human dignity.
- ii. Ensure that voluntary, informed consent is a precondition for any medical treatment or preventive or diagnostic intervention and that drug use or dependence alone are not grounds to deprive someone of the right to withhold consent.
- iii. Ensure that non-compliance with programme rules, such as failed drug tests, do not lead to automatic involuntary discharge or temporary expulsion as a disciplinary measure.



iv. Safeguard the confidentiality of all identifying information regarding an individual's involvement in drug-related health care to ensure that it is used solely for the purpose of advancing the health of that person.

#### **Where compulsory drug detention centres exist, States:**

v. Should take immediate measures to close such centres, release people detained in such centres, and replace such facilities with voluntary, evidence-based care and support in the community.

vi. Shall in all circumstances guard against the arbitrary detention of people who use drugs.

#### **Commentary**

States have a legal obligation to provide drug dependence treatment to progressively realise the right to health<sup>[148]</sup> and to ensure that people who use drugs may equally benefit from scientific progress and its applications.<sup>[149]</sup> The right to health requires that States provide drug dependence treatment on a voluntary basis and that such treatment be available, accessible on a non-discriminatory basis, acceptable, and of good quality, including in prisons and other places where people are deprived of their liberty.<sup>[150]</sup> It also requires that States allocate adequate funding for the provision of drug dependence treatment.<sup>[151]</sup>

Ensuring access to drug treatment services is also critical for protecting the right to life. The Human Rights Committee has explained that the right to life 'should not be interpreted narrowly' and that governments 'should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity', including 'the prevalence of life-threatening diseases, such as AIDS'.<sup>[152]</sup>

UN human rights treaty bodies and experts have repeatedly called on States to adopt and implement culturally appropriate and gender-sensitive harm reduction services, which include drug dependence treatment, including opioid agonist therapy,<sup>[153]</sup> to ensure access to these services in prison,<sup>[154]</sup> as well as to women<sup>[155]</sup> and children.<sup>[156]</sup>

The UN General Assembly Special Session 2016 Outcome Document recognises the importance of ensuring voluntary, evidence-based drug treatment and services to people who need it,<sup>[157]</sup> in accordance with standards developed by the UN Office on Drugs and Crime and the World Health Organization,<sup>[158]</sup> specifically referencing people in prison,<sup>[159]</sup> women,<sup>[160]</sup> and children.<sup>[161]</sup>

The right to health is acknowledged to include the right to 'control one's health and body', the 'right to make decisions regarding one's health and bodily integrity', and the right to be 'free from interference, such as ... non-consensual medical treatment and experimentation'.<sup>[162]</sup> The consequent 'free and informed consent' standard applies equally to drug dependence treatment and includes the right to refuse or withdraw from treatment without penalty.<sup>[163]</sup> This right must also be guaranteed in the context of alternative criminal justice measures (such as drug courts) to ensure that entry into treatment is medically indicated and not coercive and that treatment options are tailored to the needs of the individual.<sup>[164]</sup>

In some jurisdictions, 'drug treatment courts' or 'drug courts' are presented as an alternative to incarceration and are meant to offer court-supervised treatment for drug dependence for people who would otherwise go to prison for a drug-related offence. The Special Rapporteurs on the right to health and on the independence of judges and lawyers have raised concerns that the delivery of essential health care through the justice system – whereby judges and others who are not trained medical personnel make health care decisions – raises several human rights concerns, including

with respect to procedural due process, informed consent, patient confidentiality and autonomy, and privacy.<sup>[165]</sup> In this context, they have recommended that States take cautions against the continued rollout of drug courts in countries where oversight and monitoring mechanisms are absent.<sup>[166]</sup> The Working Group on Arbitrary Detention has criticised drug courts as ‘conceptually flawed, because judges are not qualified to evaluate, monitor or supervise drug treatment’.<sup>[167]</sup> It considers that the measure of coercion involved in the ‘choice’ between imprisonment and drug treatment ‘is too great and is an unacceptable infringement on the right to choose one’s treatment freely, to refuse treatment or to discontinue it at any time’.<sup>[168]</sup> The Working Group has recommended that States discontinue the use of drug courts and ensure that no courts use the threat of imprisonment to coercively influence accused or convicted individuals into drug treatment or otherwise order forced treatment, recommending instead that matters of drug treatment be within the exclusive competence of health professionals.<sup>[169]</sup> Several members of the UN Working Group on Arbitrary Detention have similarly highlighted reservations about respect to the right to fair trial in proceedings before drug courts.<sup>[170]</sup> The Office of the UN High Commissioner for Human Rights has also raised concern that human rights violations in the drug court system are exacerbated by racial and gender biases.<sup>[171]</sup>

International law is clear that drug use or drug dependence alone are not sufficient grounds for detention.<sup>[172]</sup> Compulsory detention, even if it has a basis in law, may also constitute arbitrary detention where it is random, capricious, or disproportionate – that is, not reasonable or necessary in the circumstances of a given case.<sup>[173]</sup> Compulsory detention to control or treat people who use drugs is unsupported by scientific evidence, is considered a form of arbitrary detention, and places individuals at risk of torture and other cruel, inhuman, or degrading treatment.<sup>[174]</sup> Indeed, the Committee against Torture,<sup>[175]</sup> the Committee on the Rights of the Child,<sup>[176]</sup> the Special Rapporteur on torture,<sup>[177]</sup> the Special Rapporteur on the right to health,<sup>[178]</sup> the UN Working Group on Arbitrary Detention,<sup>[179]</sup> the International Narcotics Control Board,<sup>[180]</sup> and numerous other UN bodies<sup>[181]</sup> have raised concerns about human rights violations at compulsory detention centres in many countries throughout the world, where ‘treatment’ may consist of military-style drills, forced labour, the administration of unknown or experimental medications, State-sanctioned beatings, caning or whipping, sexual abuse, or other intentional humiliation.<sup>[182]</sup> These bodies call for the closure of such centres and the end of such practices, as well as the implementation of voluntary, evidence-based, and rights-based drug treatment services.<sup>[183]</sup> This position has been endorsed by members of the Working Group on Discrimination against Women and Girls, as well as the Special Rapporteurs on extrajudicial, summary, or arbitrary executions; on adequate housing as a component of the right to an adequate standard of living; and on the independence of judges and lawyers.<sup>[184]</sup>

The Human Rights Committee has raised concern about arbitrary arrest and detention without due process<sup>[185]</sup> as well as compulsory detoxification, forced labour, inadequate medical care, and onerous work conditions in drug detention centres.<sup>[186]</sup> It has called for a comprehensive review of relevant laws, policies, and practices vis-à-vis drug-dependent individuals to ensure alignment with the International Covenant on Civil and Political Rights and for the introduction of effective mechanisms, with formal authority, to decide on complaints brought by people deprived of their liberty in compulsory drug detention centres.<sup>[187]</sup> The Committee has also raised concern about legislation requiring compulsory labour from people with drug dependence subject to ‘involuntary isolation and medical and social rehabilitation’ and has called for a comprehensive review of such legislation and all practices involving forced labour to bring them in line with the International Covenant on Civil and Political Rights.<sup>[188]</sup>



The Committee against Torture has raised concern about the detention of people who use drugs in manual 'labour treatment facilities', where people are detained without access to a lawyer or appropriate medical care, has highlighted the situation of women detainees' lack of access to medical care, including gynaecologists, and has urged that all forms of 'treatment through labour' be abolished.<sup>[189]</sup> The Committee has also raised concern about involuntary administrative detention in 'transit' and 'rehabilitation' centres, where people suspected of 'drug addiction' face arbitrary detention for prolonged periods of time without due process.<sup>[190]</sup> The Committee has called for the release of detainees, prioritising the use of community-based or alternative social services for people with drug dependence, for investigation and prosecution of allegations of illegal detention and ill-treatment, and for adequate redress for people who have been arbitrarily detained in these facilities and for their families.<sup>[191]</sup>

The UN General Assembly Special Session 2016 Outcome Document also calls on States to consider 'practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment', encouraging instead 'the voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent', such that 'adequate quality of drug treatment and rehabilitation services ... prevent any possible acts of cruel, inhuman or degrading treatment or punishment'.<sup>[192]</sup>

In some jurisdictions, governments have established registries identifying people who use drugs and require an individual's entry into the registry prior to receiving treatment. This information may be available to other government entities, including law enforcement agencies.<sup>[193]</sup> The Committee on Economic, Social and Cultural Rights has raised concern about police and prosecutors gaining access to the medical records of people who use drugs who are receiving treatment in medical centres and has recommended that measures be taken to ensure the confidentiality of such records.<sup>[194]</sup> The Special Rapporteur on the right to health has raised concern that the use of drug registries deters people who use drugs from seeking treatment, out of fear that their confidential medical information may be disclosed.<sup>[195]</sup> The Special Rapporteur on torture has raised the additional concern that the use of drug registries may lead to ill-treatment by health care providers.<sup>[196]</sup> The Special Rapporteur on the right to health has also raised concern about oncologists' routine practice of providing written reports to police about patients receiving opioid medication, in violation of the rights to privacy and confidentiality, and has recommended that excessive police interference with opioid prescription be ended.<sup>[197]</sup>

Indeed, consistent with international standards, appropriate measures to ensure confidentiality for those voluntarily undergoing drug dependence treatment include the enactment of laws and policies dictating that records of identity, diagnosis, prognosis, and treatment created or obtained in the course of treatment not be open to public inspection or disclosure, not be shared with third parties (such as employers, educational institutions, and service providers) without the informed consent of the individual concerned, and not be discoverable or admissible during legal proceedings.<sup>[198]</sup>

### *Relationship to the UN drug control conventions*

The UN drug control conventions include a requirement to provide treatment, after-care, and rehabilitation, for people who are drug dependent, supporting this aspect of the right to health.<sup>[199]</sup> Drug dependence treatment may be provided instead of conviction or punishment where drug dependence contributed to the commission of a minor offence.<sup>[200]</sup> While compulsory drug treatment is not required by the drug conventions, they do permit States Parties to require that a person 'shall' undergo treatment in addition to conviction or punishment.<sup>[201]</sup> This permissive norm

creates a potential tension with the human rights requirement of voluntary, informed consent to treatment.<sup>[202]</sup>

## II. Obligations arising from human rights standards: 1.3 Access to controlled substances as medicines

Access to controlled medicines without discrimination is a key element of the right to health. This includes for use as opioid substitution therapy, for pain management, in palliative care, as anaesthesia during medical procedures, and for the treatment and management of various health conditions.

**In accordance with their right to health obligations, States should:**

- i. Take legal and administrative steps to ensure the adequate availability, accessibility, and affordability of controlled medicines, with a particular focus on those medicines included in the World Health Organization Model List of Essential Medicines.
- ii. Amend laws, policies, and regulations that unnecessarily restrict the availability of and access to controlled medicines.
- iii. Follow the procedures established in the international drug control conventions when scheduling a substance that has medical uses, and balance the substance's public health risks with the effects of scheduling on restricting the availability, accessibility, and affordability of medications containing the substance.
- iv. Include access to controlled essential medicines for drug dependence treatment, treatment of pain, and palliative care in national health plans and policies and on national essential medicines lists.
- v. Ensure the special provision of controlled medicines for children, including appropriate paediatric formulations of such medicines.
- vi. Introduce health service provider training on drug dependence treatment, palliative care and pain management, and other medical conditions that require the use of controlled drugs for medical purposes, and integrate training regarding stigma, discrimination, and respect for patients' rights (including the equal rights of patients who use drugs) into ongoing health workforce education and training.
- vii. Raise public awareness about the right to have access to controlled drugs for medical purposes, including for the treatment of drug dependence and pain relief, and about the availability of such treatment.
- viii. Consider reviewing the 1961 and 1971 drug control conventions' schedules of substances under international control in light of recent scientific evidence, and prioritise exploring the medical benefits of controlled substances in accordance with the World Health Organization's scheduling recommendations.

### Commentary

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.<sup>[203]</sup> The need to ensure 'access to safe, effective, quality and affordable essential medicines' is also reflected in the Sustainable

Development Goals.<sup>[204]</sup> Yet several substances on the World Health Organization's Model List of Essential Medicines are also subject to control under the international drug conventions. These include morphine, methadone, and buprenorphine to treat pain and opioid dependence.<sup>[205]</sup> The World Health Organization has recognised that strong opioids, such as morphine, are 'absolutely necessary' for the relief of moderate to severe pain and that providing methadone or buprenorphine to treat opioid dependence is essential to meet minimum standards of health provision.<sup>[206]</sup>

The Special Rapporteurs on torture and on the right to health have concluded that failure to ensure access to essential medicines such as buprenorphine and methadone to treat opioid dependence, and morphine for pain relief, threatens the fundamental rights to health and to freedom from cruel, inhuman, and degrading treatment. They have urged States to scale up opioid access as a matter of priority.<sup>[207]</sup> Further, as recommended by the Special Rapporteur on torture, '[g]iven that lack of access to pain treatment and opioid analgesics for patients in need might amount to cruel, inhuman and degrading treatment, all measures should be taken to ensure full access and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care'.<sup>[208]</sup> UN treaty bodies have likewise recommended that States address barriers and increase access to medication-assisted treatment.<sup>[209]</sup>

The Special Rapporteur has also raised concern about oncologists' routine practice of providing written reports to police about patients receiving opioid medication, in violation of the rights to privacy and confidentiality, and has recommended that excessive police interference with opioid prescription be ended.<sup>[210]</sup> The UN Independent Expert on the enjoyment of all human rights by older persons has recommended that governments make palliative care more widely available, 'especially for those in the terminal phase of chronic illness, so as to spare them avoidable pain and allow them to die with dignity'.<sup>[211]</sup>

The Special Rapporteur on the right to health, the International Narcotics Control Board, the World Health Organization, and the UN Office on Drugs and Crime have highlighted the importance of safeguarding the availability and accessibility of controlled medicines for the treatment of drug dependence and palliative care, including for older persons in the context of the COVID-19 pandemic.<sup>[212]</sup> The Special Rapporteur on the right to health has recommended that States adopt necessary measures to ensure that the international supply chain of these substances is not interrupted and use simplified procedures for the export, transportation, storage, and provision of medicines containing controlled substances to ensure consistent access to them and to help people who use drugs avoid withdrawal symptoms.<sup>[213]</sup> The International Narcotics Control Board, the World Health Organization, and the UN Office on Drugs and Crime have made clear that in the context of acute emergencies, it is permissible for States to take such measures. They have recommended that States ease COVID-19-related transport restrictions for controlled medicines and consider local production solutions when feasible.<sup>[214]</sup>

People who use drugs are vulnerable to HIV, tuberculosis, and hepatitis infection, as well as overdose. Ongoing access to medicines, including those that may be subject to international or national control, to treat these conditions is essential to their health. The Special Rapporteur on the right to health has thus recommended, in the context of the COVID-19 pandemic, that States consider adopting measures to ensure the adequate production or import of access to medicines to treat HIV, tuberculosis, and hepatitis, as well as overdose; these medicines include antiretroviral treatment for people living with HIV/AIDS, anti-tuberculosis drugs (including second-line treatment), antiviral and interferon drugs for hepatitis, and naloxone.<sup>[215]</sup>

In recognition of the lack of access to controlled medicines, the UN General Assembly Special Session 2016 Outcome Document dedicates an entire chapter to the issue, providing detailed recommendations to ‘appropriately [address] existing barriers in this regard’, such as ‘those related to legislation, regulatory systems, health-care systems, affordability, the training of health-care professionals, education, awareness-raising, estimates, assessment and reporting, benchmarks for consumption of substances under control, and international cooperation and coordination’.<sup>[216]</sup>

### *Relationship to the UN drug control conventions*

The human rights obligation to provide access to controlled medicines adds to and strengthens related provisions of the drug control treaties, as the International Narcotics Control Board and the Commission on Narcotic Drugs have recognised.<sup>[217]</sup> The 1961 Single Convention on Narcotic Drugs explicitly states that ‘the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering’ and that ‘adequate provision must be made to ensure the availability of narcotic drugs for such purposes’.<sup>[218]</sup> This imposes the obligation on States ‘to ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes’.<sup>[219]</sup> Working to ensure such access while preventing diversion and harms to health is a core aspect of the mandates of the International Narcotics Control Board, the World Health Organization, and the UN Office on Drugs and Crime.

The World Health Organization is the body charged under the 1961 and 1971 drug conventions with the scientific and medical review of proposals for scheduling narcotic drugs and psychotropic substances under international control. Under the 1961 Single Convention on Narcotic Drugs, the Commission on Narcotic Drugs can either accept a World Health Organization proposal regarding changes in the control of substances or take no decision at all.<sup>[220]</sup> Under the 1971 Convention on Psychotropic Substances, the Commission must take into account the Organization’s recommendations, which are ‘determinative’ with respect to medical and scientific matters, while bearing in mind other economic, social, legal, administrative, and other factors it considers relevant.<sup>[221]</sup> In the context of these two conventions, the Commission thus has the discretion to accept, reject, or amend the Organization’s recommendations, but it may not place a substance under international control without such a recommendation, as the legal criteria for doing so under the conventions would not have been met.<sup>[222]</sup> In making its determination on scheduling matters, the Commission should take into account State obligations under the right to health and, at a minimum, prioritise exploring the medical benefits of substances under consideration that could warrant a change in their control status.

## **II. Obligations arising from human rights standards: 1.4. Human rights and a healthy environment**

Human rights and environmental protection are interdependent. States should ensure a safe, clean, healthy, and sustainable environment to respect, protect, and fulfil human rights, including the rights to health and to an adequate standard of living. This applies to those who live and work in and near communities where the cultivation of illicit drug crops takes place. State obligations to protect against environmental health hazards also apply extraterritorially.

**In accordance with efforts to respect, protect, and fulfil human rights related to a healthy environment, States should:**

- i. Ensure that drug control measures do not cause deforestation, the degradation of natural habitats, the loss of biodiversity, or other environmental harm either within or outside their geographic borders.
- ii. Take effective steps to prevent and redress environmental harms caused by drug control measures on illicit crop cultivation and production, including steps to limit exposure to pesticides or other chemicals used to eradicate such crops.
- iii. Establish and enforce buffer zones prohibiting or regulating the application of pesticides and other chemicals used for drug crop eradication around sensitive sites, including human settlements, farms, and water sources.
- iv. Prohibit the aerial spraying of pesticides, herbicides, and other chemicals as a method to prevent and eradicate illicit drug crops absent proof that such chemicals pose no risk to human life or the environment.
- v. Require comprehensive environmental impact assessments to be carried out with the participation of affected populations in order to assess the expected impact of drug control measures on the environment and to determine the extent to which planned activities can be modified. These studies should be completed prior to the commencement of drug control measures.
- vi. Monitor the implementation of drug control activities. In the event of environmental and related harm arising from such activities, develop and implement adequate and effective remediation measures in consultation with affected populations.

## Commentary

The obligation to adopt measures to protect against and remedy environmental hazards such as polluted air,<sup>[223]</sup> water, and soil is part of States' obligations to protect people's right to life,<sup>[224]</sup> health,<sup>[225]</sup> food,<sup>[226]</sup> and water,<sup>[227]</sup> and children's rights to health<sup>[228]</sup> and to an adequate standard of living.<sup>[229]</sup> These obligations apply extraterritorially.<sup>[230]</sup> In keeping with human rights obligations, States should ensure that the design and implementation of remediation measures are carried out in consultation with those whose rights related to a healthy environment have been violated, and they should make concerted efforts to ensure the meaningful participation of women and minority groups in these consultations.<sup>[231]</sup>

The right to a healthy environment is recognised in regional treaties and in the constitutions and legislation of more than 150 governments.<sup>[232]</sup>

UN human rights mechanisms have raised concerns that exposure to pesticides and other chemicals used for crop eradication – in particular via aerial spraying – can have serious negative impacts on the enjoyment of the right to health of adults, children, and indigenous peoples.<sup>[233]</sup> The Committee on Economic, Social and Cultural Rights has expressed deep concern about the use of pesticides and herbicides that contain glyphosate, which the World Health Organization's International Agency for Research on Cancer has identified as a probable carcinogen because of its serious adverse effects on human health.<sup>[234]</sup> The Committee has recommended the suspension of such aerial spraying and the provision of alternative development programmes instead, 'including the possibility of participating in the medical cannabis market through a licensing programme for small-scale community farmers'.<sup>[235]</sup> The Committee has also recommended the adoption of a regulatory framework that includes the application of the precautionary principle regarding the use of harmful pesticides and herbicides, in particular those with glyphosate, to avoid the negative health impacts and environmental degradation that can result from their use.<sup>[236]</sup>

Based on its concerns about aerial spraying, the Special Rapporteur on the rights of indigenous peoples recommends that no aerial spraying of illicit crops take place near indigenous settlements or sources of provisions unless the relevant indigenous communities have expressly requested such spraying and are fully informed of the implications.<sup>[237]</sup> The Special Rapporteur also recommends that aerial spraying affecting a population across a national border be definitively halted and that compensation be provided for any damages caused by such spraying.<sup>[238]</sup> Meanwhile, the Special Rapporteur on the right to food has expressed concern about the detrimental consequences of the use of pesticides on the rights to food, health, and biodiversity and has called on States to create buffer zones around plantations and farms.<sup>[239]</sup> The Special Rapporteur recommends that States use the precautionary principle as the basis for their risk assessment and registration processes for pesticides, taking into account these chemicals' hazardous effects on human health and the environment, and recommends that States consider non-chemical alternatives first, allowing the registration of chemicals only where need can be demonstrated.<sup>[240]</sup>

### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires States Parties to 'take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances'. However, these measures must 'respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as protection of the environment'.<sup>[241]</sup> The UN General Assembly Special Session 2016 Outcome Document reiterates this obligation,<sup>[242]</sup> also recommending the use of 'criteria related to environmental sustainability' in measuring the effectiveness of alternative development programmes.<sup>[243]</sup>

## **II. Obligations arising from human rights standards: 2. Right to benefit from scientific progress and its applications**

Everyone has the right to enjoy the benefits of scientific progress and its applications. This right applies equally in the context of drug use and dependence, as well as in development and criminal justice responses to the illicit drug trade.

### **In accordance with this right, States should:**

- i. Take legislative and other appropriate measures to ensure that scientific knowledge and technologies and their applications – including evidence-based, scientifically proven interventions to treat drug dependence, to prevent overdose, and to prevent, treat, and control HIV, hepatitis C, and other diseases – are physically available and financially accessible without discrimination.
- ii. Ensure that scientific research, including that on controlled drugs, can be undertaken and communicated without censorship and free from political interference.
- iii. Consider reviewing the 1961 and 1971 drug control conventions' schedules of substances under international control in light of recent scientific evidence, and prioritise exploring the medical benefits of controlled substances in accordance with the World Health Organization's scheduling recommendations.

### **Commentary**



The right of everyone to benefit from scientific progress and its applications is recognised in the Universal Declaration of Human Rights and guaranteed by the International Covenant on Economic, Social and Cultural Rights and regional instruments in the Americas, the Arab world, and Europe.<sup>[244]</sup> The Covenant also places obligations on States to promote the conservation, development, and diffusion of science;<sup>[245]</sup> respect the freedom necessary for scientific research,<sup>[246]</sup> and recognise the benefits to be derived from encouraging and developing international scientific cooperation.<sup>[247]</sup> The Special Rapporteur in the field of cultural rights has further noted that the normative content of the right to benefit from scientific progress includes access by everyone, without discrimination, to the benefits of science and its applications, including scientific knowledge; opportunities for all to contribute to the scientific enterprise; the related rights to participate in decision making and to information; and an enabling environment fostering the conservation, development, and diffusion of science and technology.<sup>[248]</sup>

The Committee on Economic, Social and Cultural Rights has recognised that the right to participate in and to enjoy the benefits of scientific progress is instrumental to realise the right to health and that the links between the two are 'clear and diverse'.<sup>[249]</sup> The Committee has thus recommended that States 'promote scientific research, through financial support or other incentives, to create new medical applications and make them accessible and affordable to everyone, especially the most vulnerable', and in particular, to 'prioritize the promotion of scientific progress to facilitate better and more accessible means for the prevention, control and treatment of epidemic, endemic, occupational and other diseases'.<sup>[250]</sup>

In this regard, the Committee has recognised the special relevance of the right to benefit from scientific progress and its applications for drug law and policy. The Committee has noted that 'scientific research is impaired for some substances under the international conventions on drug control, which classify these substances as harmful for health and with no scientific or medical value. However, some of these classifications were made with insufficient scientific support to substantiate those classifications, as credible evidence exists regarding the medical uses of a number of them, such as cannabis for the treatment of certain epilepsies'.<sup>[251]</sup>

The Committee has thus recommended that States 'harmonize the fulfilment of their obligations under the international drug control regime with their obligations to respect, protect and fulfil the right to participate in and to enjoy the benefits of scientific progress and its applications, through regular revision of their policies in relation to controlled substances'.<sup>[252]</sup> The Committee has noted that that these restrictions limit the right to benefit from scientific progress and its applications and therefore should meet the requirements for limitations of the International Covenant on Economic, Social and Cultural Rights and that, further, given the potential health benefits of these controlled substances, such restrictions should be weighed in relation to States' Covenant obligations under the right to health.<sup>[253]</sup>

Failure to recognise and respect the right to benefit from scientific progress can have adverse health and other effects on people who use or are dependent on drugs, among others. For example, in order to implement the right to health of such persons through their equal right to benefit from scientific progress and its applications, the Committee on Economic, Social and Cultural Rights has called for the implementation of World Health Organization recommendations to improve the availability, accessibility, and quality of harm reduction services (such as needle exchange programmes and opioid substitution treatment) and for the free distribution of hepatitis C treatment, including to children, women, and people in prison.<sup>[254]</sup> The Committee has also noted the importance of ensuring that 'medicines and medical treatments including in the field of drug dependency, are

evidence-based, and that the risks involved have been properly evaluated and communicated in a clear and transparent manner, so that patients can provide properly informed consent'.<sup>[255]</sup>

The Committee has emphasised that States have an obligation to strike an adequate balance between protecting the moral and material interests of authors and protecting other human rights under the Covenant, including balancing the private interests of authors with the public interest in enjoying broad access. States should therefore ensure that their legal and other regimes for the protection of authors' moral and material interests constitute no impediment to States' ability to comply with their core obligations with respect to other human rights, including the rights to health, to take part in cultural life, and to enjoy the benefits of scientific progress and its applications. The Committee has stressed that 'intellectual property is a social product and has a social function' and that States 'thus have a duty to prevent unreasonably high costs for access to essential medicines, plant seeds or other means of food production ... from undermining the rights of large segments of the population to health and food'. It has further advised that 'States parties should prevent the use of scientific and technical progress for purposes contrary to human rights and dignity, including the rights to life, health and privacy, e.g. by excluding inventions from patentability whenever their commercialization would jeopardize the full realization of these rights'.<sup>[256]</sup>

The Special Rapporteur in the field of cultural rights has likewise noted that 'the obligations of States under intellectual property treaties must not jeopardize the implementation of their obligations under human rights treaties',<sup>[257]</sup> which, as the Committee on Economic, Social and Cultural Rights has explained, includes the right to access essential medicines. The Special Rapporteur has concluded that '[S]tates have a positive obligation to provide for a robust and flexible system of patent exclusions, exceptions and flexibilities based on domestic circumstances, including through the establishment of compulsory and government use licences when needed'.<sup>[258]</sup> Some domestic courts have applied the right to benefit from scientific progress as a ground for compelling State action to ensure access to affordable medicines.<sup>[259]</sup>

The UN General Assembly Special Session 2016 Outcome Document calls upon all relevant UN agencies to provide 'advice and assistance to States that are reviewing and updating their drug policies ... through, among others, the promotion of the exchange of information and best practices on scientific evidence-based policies'.<sup>[260]</sup>

## II. Obligations arising from human rights standards: 3. Right to an adequate standard of living

Everyone has the right to an adequate standard of living, including the right to adequate food, clothing, and housing. This right is equally shared by people who use drugs and people who are dependent on illicit drug economies.

**In accordance with this right, States should:**

- i. Develop specific viable and sustainable economic alternatives for individuals and communities who are particularly vulnerable to exploitation in the illicit drug economy.
- ii. Ensure that efforts to prevent illicit drug crop cultivation or eradicate illicitly cultivated drug crops do not have the effect of depriving people of their rights to a means of subsistence or to be free from hunger; ensure that interventions are properly sequenced so that crop eradication does not take place until small-farmer households dependent on illicit drug crop economies have adopted viable



and sustainable alternative livelihoods; and undertake associated actions to promote land tenure through state-recognised land titling procedures.

iii. Review laws, policies, and practices on land and housing to ensure the existence of adequate safeguards protecting against discriminatory eviction based on actual or suspected illicit drug use and providing access to timely recourse and commensurate reparation for victims of such eviction.

## Commentary

International and regional human rights law guarantees the right to an adequate standard of living.<sup>[261]</sup> This right includes related rights to available, accessible, and adequate food, clothing, and housing, and the continuous improvement of living conditions.<sup>[262]</sup> It also includes the right to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses, such as drinking, sanitation, bathing, washing clothes, and cooking.<sup>[263]</sup>

In practice, without appropriate safeguards, certain drug control measures may infringe these rights, leaving people at risk of poverty, hunger, and landlessness or homelessness. Particular risks to the right to an adequate standard of living are posed by crop eradication measures, aid conditionality, and land tenure and eviction laws, policies, and practices.

### *Crop eradication measures*

Many small-scale farmers in drug-producing countries illicitly cultivate crops because of poverty, marginalisation, and a lack of viable alternatives. UN human rights treaty bodies have raised concerns that aerial spraying to eradicate drug crops exacerbates these problems, causing displacement, food insecurity, adverse health effects, and the denial of livelihoods.<sup>[264]</sup>

Illicit crop eradication measures pose specific risks to the right to food and the right to water. According to the Committee on Economic, Social and Cultural Rights, the standard as applied to the right to water requires that water be safe, meaning that it must be free from microbes, parasites, chemical substances, and radiological hazards that constitute a threat to human health.<sup>[265]</sup> Moreover, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Special Rapporteur on the right to health, and the Special Rapporteur on the rights of indigenous peoples have all raised concerns about the adverse effects of aerial spraying to eradicate drug crops on the rights to water and to food security, particularly for indigenous peoples and other rural communities.<sup>[266]</sup> The Committee on the Rights of the Child recommends that States carry out independent, rights-based environmental and social impact assessments of such spraying, including prior consultation with affected communities (particularly indigenous ones), and take all precautions to avoid harmful impacts on the health of children.<sup>[267]</sup>

The Committee on Economic, Social and Cultural Rights has recommended that States ensure that crop substitution programmes offer 'alternative productive activities that guarantee the peasant farmers concerned and their families an adequate standard of living, ensuring their effective participation in both the design and the conduct of those activities, as well as real opportunities to market their produce'.<sup>[268]</sup> To this end, the Committee has recommended that alternative development programmes offered include 'the possibility of participating in the medical cannabis market through a licensing programme for small-scale community farmers'.<sup>[269]</sup>

The Committee has also raised concern about the risk of death or serious injury by anti-personnel mines or in clashes with illegal armed groups faced by peasants participating in the manual eradication of crops and government failure to take effective measures to reduce risks associated with crop eradication. It has recommended that greater efforts be made to ensure safe working

conditions, in accordance with international standards, for everyone, especially civilians, involved in manual crop eradication; that necessary measures be taken to promote the creation of jobs offering decent working conditions; and that measures be taken to provide remedies and compensation to peasant farmers and their families who have been harmed while performing this work.<sup>[270]</sup>

The UN system common position on drug control policy, adopted in November 2018, commits to ‘stepping up our joint efforts and supporting each other ... [t]o promote sustainable livelihoods through adequately-sequenced, well-funded and long-term development-oriented drug policies in rural and urban areas affected by illicit drug activities, including cultivation, production and trafficking, bearing in mind environmental protection and sustainability’.<sup>[271]</sup>

UN entities with responsibilities in drug control matters, including the Commission on Narcotic Drugs, the UN Office on Drugs and Crime, and the UN General Assembly, have recognised poverty, marginalisation, and a lack of viable alternatives as root causes of illicit drug crop cultivation and have repeatedly reaffirmed their commitment to addressing them, including by tackling poverty and creating sustainable livelihood opportunities.<sup>[272]</sup>

Accordingly, the UN Guiding Principles on Alternative Development, adopted by the UN General Assembly in 2014, call on States, development agencies, donors, international financial institutions, and international and regional organisations to ‘apply their utmost efforts ... [t]o ensure, when considering crop control measures, that small-farmer households have opportunities for viable and sustainable licit livelihoods’ and ‘that [such] measures may be properly sequenced in a sustainable fashion and appropriately coordinated, taking into account the circumstances of the region, country or area concerned’.<sup>[273]</sup>

In relation to the broader right to continuous improvement of living conditions associated with the right to an adequate standard of living in areas dependent on illicit drug crop cultivation, where crop eradication and alternative livelihood measures may consequently apply, the UN General Assembly Special Session 2016 Outcome Document encourages States to improve ‘infrastructure and basic public services’ in areas ‘affected by or at risk of illicit cultivation and other related activities’.<sup>[274]</sup>

### *Aid conditionality*

The Intergovernmental Expert Working Group on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, convened by the Commission on Narcotic Drugs, recommends that donor countries ‘not make development assistance conditional on reductions in illicit drug crop cultivation’ and that UN Member States ‘ensure that eradication is not undertaken until small-farmer households have adopted viable and sustainable livelihoods and that interventions are properly sequenced’.<sup>[275]</sup> The UN Office on Drugs and Crime, the World Bank, and the European Union have adopted similar positions respectful of the right to an adequate standard of living.<sup>[276]</sup>

### *Land tenure*

The UN General Assembly Special Session 2016 Outcome Document encourages ‘the development of viable economic alternatives, particularly for communities affected by or at risk of illicit cultivation of drug crops and other illicit drug-related activities in urban and rural areas ... including through job opportunities’.<sup>[277]</sup> In rural contexts, this may necessitate improved ‘access and legal titles to land for farmers and local communities’,<sup>[278]</sup> while also ensuring that any related land tenure reforms give women equal rights to access, own, and control land and other forms of property,<sup>[279]</sup> in keeping with the right to an adequate standard of living, including the right to the continuous improvement of

living conditions. The Sustainable Development Goals also include State commitments to ensure that all men and women have secure tenure rights to land and commitments to undertake reforms to provide women equal rights to economic resources, and to access to ownership and control over agricultural land and other forms of property, as part of their efforts to eradicate poverty and achieve gender equality.<sup>[280]</sup>

### *Evictions*

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, has raised concern about laws subjecting applicants for subsidised public housing to denial, and tenants to eviction, based on 'drug-related activity' and has called for States to prohibit the use of criteria such as drug tests and criminal records for gaining access to public housing.<sup>[281]</sup> The Special Rapporteur has highlighted their discriminatory nature on public housing residents, their negative, fragmenting effect on families, and their negative impact on domestic violence victims, who are subject to eviction if they report abuse, as the laws do not take into account whether tenants are crime victims or perpetrators.<sup>[282]</sup>

In relation to the right to housing as part of the right to an adequate standard of living, the Committee on Economic, Social and Cultural Rights has noted that non-discrimination provisions impose an additional obligation upon governments to ensure that evictions, where they do occur, do not involve discrimination.<sup>[283]</sup> Such additional non-discrimination obligations may become relevant particularly where evictions are not based on reasons that may be considered 'justifiable' under the right to housing – such as 'persistent non-payment of rent' or 'damage to rented property without any reasonable cause'<sup>[284]</sup> – but rather based on a tenant's actual or suspected illicit drug use or criminal record for drug use or possession for personal use. Special attention is needed to prevent the disproportionate impact of evictions on marginalised or otherwise vulnerable individuals and groups in this regard, including 'women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups', recognising also that '[w]omen in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights ... or rights of access to property or accommodation ...'.<sup>[285]</sup>

### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires that each State Party take 'appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory',<sup>[286]</sup> while also respecting 'fundamental human rights' and taking 'full account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment'.<sup>[287]</sup> In a different context, the obligation to take 'appropriate measures' is explained as follows: 'i.e. [States Parties] are bound to take such measures as may be necessary, but only to the extent that they appear to be practical and can reasonably be expected of them under their special conditions'.<sup>[288]</sup> However, as established by the text of the clause itself, such 'necessary', 'practical', and 'reasonable' cultivation prevention and eradication measures will be 'appropriate' only if they also comply with 'fundamental human rights' standards, which would include those related to the right to an adequate standard of living.

Also under the 1988 Convention, cooperation efforts may include 'support for integrated rural development leading to economically viable alternatives to illicit cultivation'.<sup>[289]</sup> The Commentary on the 1988 Convention explains that this proviso 'creates no legal obligation on parties, but draws

attention to the need, in some countries and regions, for programmes of integrated rural development designed, in effect, to rebuild a local economy hitherto partly or entirely based on illicit cultivation'.<sup>[290]</sup> This permissive clause provides legal latitude for States to consider alternative policy options that are consistent with human rights obligations related to the right to an adequate standard of living.

## II. Obligations arising from human rights standards: 4. Right to social security

Everyone has the right to social security, including social insurance. This right applies equally to all without discrimination, including people who use drugs, people dependent on illicit drug economies, people in prisons and other places of detention or closed settings, and people who have been arrested for, charged with, or convicted of drug-related offences.

### In accordance with this right, States should:

- i. Take steps, to the maximum of available resources, to establish and progressively expand comprehensive social security systems that equally guarantee legal entitlements – including universal access to health care, housing, education, and basic income security – to the aforementioned individuals and groups, while also ensuring that particularly marginalised or vulnerable groups can effectively exercise and realise these human rights on an equal basis with others.
- ii. Prevent and remedy the denial of social assistance to persons on the basis of drug dependence, which is impermissible discrimination.
- iii. If in a position to assist other States, facilitate the realisation of the right to social security and related entitlements, including through the provision of economic and technical assistance.

### Commentary

The right to social security, including social insurance, is enshrined in numerous international and regional treaties.<sup>[291]</sup> It includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage and the right to equal enjoyment of adequate protection from social risks and contingencies.<sup>[292]</sup>

Recognising the importance of social security in preventing and reducing poverty and social exclusion, the Committee on Economic, Social and Cultural Rights emphasises States' obligations to ensure that social security systems cover everybody, but especially 'those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed ... minority groups ... prisoners and detainees'.<sup>[293]</sup> Numerous human rights mechanisms, including the Human Rights Council, the Committee on Economic, Social and Cultural Rights, and the Special Rapporteur on extreme poverty and human rights, recommend the establishment of social protection floors comprising a set of basic social security guarantees in cash and in kind, in line with a previous recommendation of the International Labour Organization.<sup>[294]</sup> The implementation of nationally appropriate social protection systems and measures for all, including floors, is also among the targets of the Sustainable Development Goals.<sup>[295]</sup>

In some jurisdictions, identification as a person who uses drugs or who has been in detention or holds a conviction for a drug-related offence poses considerable obstacles to obtaining social security

and other government benefits.<sup>[296]</sup> However, as the Committee on Economic, Social and Cultural Rights has explained, the right to social security requires that qualifying conditions for benefits be reasonable, proportionate, and transparent and that the withdrawal, reduction, or suspension of benefits be circumscribed, based on reasonable grounds, subject to due process and provided for in national law.<sup>[297]</sup> The Committee has expressed concern that conditioning welfare benefits on drug testing is neither reasonable nor proportionate, lacks a credible evidence base, may deepen stigma, and may drive people who use drugs away from treatment.<sup>[298]</sup> The Special Rapporteur on extreme poverty and human rights has affirmed that conditioning welfare benefits on drug testing is neither reasonable nor proportionate.<sup>[299]</sup>

The Working Group of Experts on People of African Descent has raised concern about racial bias in the application of criminal justice policies enacted as part of drug control efforts, resulting in longer prison sentences and higher conviction rates, and the deep collateral damage on people of African descent. People with low-level, non-violent criminal records can be denied access to social housing, safety net programmes, and welfare assistance. Those with felony drug records are fully or partially excluded from food assistance in some jurisdictions.<sup>[300]</sup>

## II. Obligations arising from human rights standards: 5. Right to life

Everyone has the inherent right to life. This right must be protected by law. No one shall be arbitrarily deprived of their life based on actual or perceived drug use or involvement in the illicit drug trade. Drug offences do not meet the internationally recognised threshold of ‘most serious crimes’ for which the death penalty – where it exists – may be imposed.

### **In accordance with this right, States shall:**

- i. Take immediate action to halt executions, commute death sentences, and abolish the death penalty for drug offences. States may not transform an offence from a non-capital one to a capital one nor expand penalties for existing offences to include the death penalty.
- ii. Take measures to prevent both State-perpetrated and private violence, threats to life, and unnecessary or disproportionate use of potentially lethal force based on actual or perceived drug use or involvement in the illicit drug trade, and investigate, prosecute, and hold accountable those responsible for such acts.
- iii. Avoid extraditing or otherwise forcibly returning or transferring a person to another State where that person risks being sentenced to the death penalty for drug offences, unless provided with credible and effective assurances that the death penalty will not be imposed.
- iv. Avoid extraditing or otherwise forcibly returning or transferring a person to another State where there are substantial grounds to believe that, based on actual or perceived drug use or involvement in the illicit drug trade, the person risks arbitrary deprivation of their right to life, including by non-State actors over whom the receiving State has no or only partial control or whose acts the receiving State cannot prevent.

### **In addition, States should:**

- v. Take steps to ensure that they do not aid or assist in the imposition of the death penalty outside of their jurisdiction and that the supply of equipment, personnel, training, and funding for drug law enforcement activities by or in another State, mutual legal assistance between States, and joint

operations with other States do not contribute, directly or indirectly, to the imposition of the death penalty.

vi. Take positive measures to increase the life expectancy of people who use drugs, including adequate steps to provide scientific, evidence-based information, facilities, goods, and services on drug use prevention, overdose prevention and response, and harm reduction, including to reduce such harms as overdose, HIV, viral hepatitis, and other infections and injuries sometimes associated with drug use.

## Commentary

The right to life is recognised in many international and regional treaties and instruments.<sup>[301]</sup> No derogation of the right to life is permitted, even during armed conflict or public emergencies that threaten the life of a nation.<sup>[302]</sup> The prohibition on the arbitrary deprivation of life is a rule of customary international law and a peremptory, or *jus cogens*, norm,<sup>[303]</sup> which means that the obligation to uphold it extends to all States, regardless of treaty ratification.

### *Arbitrary deprivation of life: Extrajudicial, summary, and arbitrary executions*

The deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law.<sup>[304]</sup> The Human Rights Committee has explained that a deprivation of life may still be arbitrary even if authorised by domestic law. The notion of ‘arbitrariness’ is not to be fully equated with ‘against the law’; rather, it must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law,<sup>[305]</sup> as well as elements of reasonableness, necessity, and proportionality.

The duty to protect the right to life ‘by law’ requires that States take all necessary measures to prevent arbitrary deprivations of life by law enforcement officials, including soldiers charged with law enforcement measures and those empowered or authorised by the State to use potentially lethal force.<sup>[306]</sup> These measures include enacting an adequate domestic legal framework for the use of force by State actors; procedures to ensure that law enforcement actions are planned to minimise the risk to human life; mandatory reporting, review, and investigation of lethal and other life-threatening incidents; and the supplying of ‘less-lethal’ means and adequate protective equipment to obviate the need to resort to lethal force.<sup>[307]</sup> Law enforcement officials should be trained and bound by relevant international standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>[308]</sup>

States are under an obligation to rigorously limit and strictly and effectively monitor the use of force by private individuals and entities empowered or authorised to use potentially lethal force. They are responsible for such individuals’ or entities’ failure to comply with obligations under the right to life and must ensure that victims of the arbitrary deprivation of life by such individuals or entities are granted an effective remedy.<sup>[309]</sup> States also have a responsibility to address ‘attitudes or conditions within society which encourage or facilitate’ violence or killings committed by non-State actors, including killings of members of minority groups and the social cleansing of ‘undesirables’.<sup>[310]</sup>

The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, several Special Rapporteurs, and the High Commissioner for Human Rights have all expressed concern about extrajudicial executions by police and armed forces carried out in the course of drug law enforcement activities and about the impunity of perpetrators of such unlawful killings, calling for investigations and for perpetrators to be brought to justice.<sup>[311]</sup> In some countries, high-ranking



government officials have ordered or indirectly encouraged police or the military to ‘shoot to kill’ to combat the trade and use of drugs, a concern that has been raised by the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on extrajudicial, summary, or arbitrary executions.<sup>[312]</sup>

The use of potentially lethal force for law enforcement purposes is an extreme measure,<sup>[313]</sup> which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat.<sup>[314]</sup> The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat.<sup>[315]</sup> The primary purpose of the ‘protect life’ principle is to save life. Accordingly, lethal force may not be used intentionally merely to protect law and order or other similar interests, such as to disperse protests or safeguard property interests.<sup>[316]</sup> When armed forces participate in law enforcement efforts, including anti-drug operations, they should be trained and bound by international standards on the use of force, in particular the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>[317]</sup> They must also be provided with all necessary instructions, training, and equipment to enable them to act with full respect for this legal framework.<sup>[318]</sup> The Inter-American Court of Human Rights has elaborated upon the obligations of States to restrict the use of armed forces for law enforcement purposes in the context of the ‘war on drugs’, affirming that the maintenance of public order and citizen security is a function reserved primarily for civilian police forces and further emphasising that security forces’ intervention should be exceptional, temporary, and restricted to what is strictly necessary in the circumstances of the case; subordinate and complementary to civil control; subject to human rights law and standards on the use of force and provided with the necessary training to act in full respect of such standards; and overseen by competent, independent, and technically capable civilian bodies.

The International Narcotics Control Board and the executive director of the UN Office on Drugs and Crime have also condemned the practice of extrajudicial executions as a violation of fundamental rights and a clear violation of the international drug conventions.<sup>[319]</sup> The International Narcotics Board has highlighted that the drug conventions, in line with international human rights law, require that suspected drug-related criminality be addressed through formal criminal justice responses, in accordance with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and internationally recognised due process standards and has appealed to States to act in accordance with these international standards.<sup>[320]</sup>

The Minnesota Protocol on the Investigation of Potentially Unlawful Death provides additional guidance regarding international norms on the prevention and investigation of extra-legal, arbitrary, and summary executions.<sup>[321]</sup>

#### *Extradition and other forcible return or transfer*

The duty to respect and ensure the right to life requires States to refrain from extraditing, deporting, or otherwise transferring individuals to countries in which there are substantial grounds for believing that these persons risk being deprived of their life in violation of international guarantees of this right.<sup>[322]</sup>

All three UN drug control conventions include provisions on extradition.<sup>[323]</sup> They also include safeguard clauses specifying that the relevant obligations are subject to domestic and constitutional law<sup>[324]</sup> and permitting States to refuse to comply with extradition requests ‘where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion,

nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request'.<sup>[325]</sup> Not only do international human rights treaties provide stronger human rights protection than this, but so too do many national laws, constitutions, and bilateral treaties. The drug control conventions explicitly state that extradition is subject to these obligations.<sup>[326]</sup>

In certain circumstances, diplomatic assurances provided by the requesting State can resolve issues relating to human rights considerations in the extradition process. However, such assurances may be relied upon only if they are a suitable means to eliminate the danger to the individual concerned and only if the requested State actually considers them reliable.<sup>[327]</sup> Diplomatic assurances should not be used to undermine the principle of non-refoulement.<sup>[328]</sup> With regard to the death penalty, assurances may be related to the formal legal process and therefore monitored. However, extradition to a country with a mandatory death penalty for the relevant offence raises questions about the reliability of any assurances, as there is a lack of judicial discretion in sentencing. Moreover, assurances where the State cannot control non-State actors, the military, or others from violating an individual's right to life are similarly unreliable.<sup>[329]</sup>

The Special Rapporteur on extrajudicial, summary, or arbitrary executions recommends that States amend national laws on extradition and deportation to specifically prohibit the forced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognised standards, unless adequate assurances are obtained.<sup>[330]</sup>

#### *Protecting and promoting health to preserve life*

The Human Rights Committee has explained that the 'right to life is a right which should not be interpreted narrowly' and that governments 'should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity', including 'degradation of the environment, deprivation of land, territories and resources of indigenous peoples, extensive substance abuse [and] the prevalence of life threatening diseases, such as AIDS'.<sup>[331]</sup> Protecting the right to life requires measures to ensure access without delay to essential goods and services that may be essential to life, including health care.<sup>[332]</sup> This obligation thus interacts and is linked with obligations under the right to health, such as the provision in the International Covenant on Economic, Social and Cultural Rights directing governments to take steps 'necessary for ... the prevention, treatment and control of epidemic ... diseases', which include those that particularly affect people who use drugs, such as HIV and viral hepatitis. This also means that protecting the right to life requires measures to ensure access without delay to certain goods and services that may be essential to life, including health care.<sup>[333]</sup> This includes ensuring access to the full range of harm reduction services as outlined by the World Health Organization and to overdose prevention, in addition to removing barriers to such services, including law enforcement practices and criminalisation, in order to reduce rates of HIV and hepatitis infection.

For example, the International Narcotics Control Board has noted that the operation of supervised injection sites is consistent with the drug conventions, citing evidence that such facilities have proven effective in protecting the health and lives of marginalised people who use drugs, and public health more generally, without increasing drug use or drug trafficking.<sup>[334]</sup> The Board has emphasised that the 'ultimate objective [of such sites] should be to reduce the adverse consequences of drug abuse without condoning or encouraging drug use and trafficking'.<sup>[335]</sup> To this end, the Board has called on States to ensure that these facilities 'provide or refer patients to treatment, rehabilitation and social reintegration services ... [which] must not be a substitute for demand reduction programs'.<sup>[336]</sup> The Supreme Court of Canada has ruled that the denial of an exemption to criminal prohibitions on drug possession in order to permit the operation of a supervised injection site without risk of criminal



prosecution impermissibly violates the constitutional rights of people with drug dependence, namely their rights to life, liberty, and security of the person.<sup>[337]</sup>

### *Death penalty*

Under international law, the death penalty, when used, is restricted to the ‘most serious crimes’,<sup>[338]</sup> which ‘appertain only to crimes of extreme gravity, involving intentional killing’.<sup>[339]</sup> Drug offences cannot serve as the basis for the death penalty,<sup>[340]</sup> and mandatory death sentences are prohibited.<sup>[341]</sup> States must review their criminal laws to ensure that the death penalty is not imposed for crimes not qualifying as ‘most serious crimes’. They should revoke death sentences issued, and resentence those convicted, for such crimes.<sup>[342]</sup>

The International Covenant on Civil and Political Rights also imposes an absolute prohibition on the death penalty for pregnant women. Both the International Covenant and the Convention on the Rights of the Child impose an absolute prohibition on the death penalty for offences committed by persons under 18 years of age.<sup>[343]</sup> The Human Rights Committee has further concluded that States must refrain from imposing the death penalty on people who face special barriers in defending themselves on an equal basis as others, such as people whose serious psychosocial and intellectual disabilities impede their effective defence.<sup>[344]</sup> The Committee recommends that States refrain from executing people who have a diminished ability to understand the reasons for their sentence and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for their families (such as where the person in question has suffered serious human rights violations or is the parent of very young or dependent children).<sup>[345]</sup> In considering alternative sentencing, the Convention on the Rights of the Child also prohibits minors’ imprisonment without the possibility of release.<sup>[346]</sup>

In addition, States have a duty to take measures to ensure that the death penalty is never imposed in an unlawful or discriminatory manner. Where the death penalty is pursued or imposed disproportionately against religious, racial, or ethnic minorities; indigenous groups; foreign nationals; indigent persons; LGBTI persons; groups based on their political or other opinions; or any other ‘other status’ groups against which discrimination is prohibited (such as people who use drugs), this may constitute discriminatory application of the death penalty.<sup>[347]</sup> The General Assembly has urged States to ensure that the death penalty is not applied on the basis of discriminatory laws or as a result of discriminatory or arbitrary application of the law.<sup>[348]</sup>

The Human Rights Committee emphasises that States can never impose the death penalty for an offence for which such punishment was not provided by law at the time of the act’s commission, but notes that they should apply the abolition of the death penalty retroactively to people already charged with or convicted of a capital offence.<sup>[349]</sup> Moreover, ‘States parties to the [International Covenant on Civil and Political Rights] who have abolished the death penalty by amending their domestic laws, becoming parties to the Second Optional Protocol ... or adopting another international instrument obligating them to abolish the death penalty are barred from reintroducing it’.<sup>[350]</sup> The Committee has also stated that serious procedural flaws, such as the failure to promptly inform detained foreign nationals of their right to consular notification pursuant to the Vienna Convention on Consular Relations and the failure to afford individuals about to be deported to a country in which their lives are claimed to be at real risk with the opportunity to avail themselves of available appeal procedures, may render the imposition of the death penalty in violation of the Covenant.<sup>[351]</sup>

States should also take steps to ensure that they do not aid or assist in the imposition of the death penalty outside of their jurisdiction and that the supply of equipment, personnel, training, and

funding for drug law enforcement activities by or in another State, mutual legal assistance between States, and joint operations with other States in relation to drug control do not contribute, directly or indirectly, to the imposition of the death penalty. In this respect, the Special Rapporteur on extrajudicial, summary, or arbitrary executions has raised concern that international cooperation on criminal and other matters – such as the provision of mutual legal, material, financial, or technical assistance between States, State contributions to multilateral assistance programmes, and the transfer of persons from abolitionist to non-abolitionist States – may contribute to the imposition of the death penalty for drug offences or drug-related crimes, in violation of international law.<sup>[352]</sup> These forms of inter-State cooperation may also raise questions of complicity where they contribute to the imposition of the death penalty in violation of international standards or issues of non-compliance with the assisting State's international legal commitments.<sup>[353]</sup> The Special Rapporteur calls on States to develop guidelines on the provision of financial and technical aid and mutual assistance, especially with regard to drug-related offences, to ensure that they do not support violations of the right to life.<sup>[354]</sup>

## **II. Obligations arising from human rights standards: 6. Freedom from torture, cruel, inhuman, or degrading treatment or punishment**

Torture and other cruel, inhuman, or degrading treatment or punishment are absolutely prohibited, in all circumstances. This includes during the arrest, questioning, and detention of persons alleged to have committed drug-related crimes or otherwise implicated during an investigation. The withholding of drugs from those who need them for medical purposes, including for drug dependence treatment and pain relief, is considered a form of torture.

### **In accordance with this right, States shall:**

- i. Take effective legislative, administrative, judicial, and other measures to prohibit, prevent, and redress all acts of torture and ill-treatment in their jurisdiction and in all settings under their custody or control, including in the context of drug dependence treatment, whether administered in public or private facilities.
- ii. Promptly investigate allegations of torture and cruel, inhuman, or degrading treatment or punishment by State agents, as well as acts that occur in their territory or under their jurisdiction (whether carried out by State or non-State actors), and prosecute and punish those responsible, including when victims are persons alleged to have committed drug-related offences or who are dependent on drugs.
- iii. Avoid extraditing or otherwise forcibly returning or transferring individuals to another State where there are substantial grounds to believe that they are at risk of subjection to torture or cruel, inhuman, or degrading treatment or punishment, including by non-State actors over which the receiving State has no or only partial control or whose acts the receiving State cannot prevent, or because they risk expulsion to a third State where they may be in danger of subjection to torture or other prohibited ill-treatment.
- iv. Abolish corporal punishment for drug offences where it is in place.

### **In addition, States should:**

v. Ensure access to essential medicines, including for drug dependence, pain treatment, and palliative care.

vi. Ensure that access to health care for people who use or are dependent on drugs and are in places of detention is equivalent to that available in the community.

vii. Establish a national system to effectively monitor drug dependence treatment practices and to inspect drug dependence treatment centres, as well as places of detention, including migrant detention centres, police stations, and prisons.

## Commentary

The prohibition against torture and other cruel, inhuman, or degrading treatment or punishment is enshrined in numerous international and regional treaties and other instruments.<sup>[355]</sup> This prohibition is absolute and non-<sup>[356]</sup> The obligation to prohibit, prevent, and redress torture and ill-treatment extends to all acts by State and non-State actors<sup>[357]</sup> and to all contexts of custody and control, including prisons, hospitals, 'and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm'.<sup>[358]</sup>

### *Policing practices*

The Committee against Torture, the Human Rights Committee, the Working Group on Arbitrary Detention, and the Special Rapporteur on torture have found that the use of violence by law enforcement officials and the withholding of opioid substitution therapy or otherwise inducing withdrawal to coerce confessions or obtain information – for example, about other people who use drugs or to reveal dealers or suppliers – constitute ill-treatment and possibly torture.<sup>[359]</sup> The Committee against Torture has urged that States take 'all measures necessary to effectively protect drug users deprived of liberty against the infliction of pain and suffering associated with withdrawal by police, including to extract confessions; ensure such confessions are not admitted by the courts; and provide drug users in detention with adequate access to necessary medical treatment'.<sup>[360]</sup>

The use of violence by law enforcement officials and of withdrawal to coerce confessions or obtain information also contravenes international standards for law enforcement, in particular the UN Code of Conduct for Law Enforcement Officials, which states that torture by law enforcement officials cannot be justified in any circumstance and instructs such officials to ensure the 'full protection of persons in their custody' and 'take immediate action to secure medical attention whenever required'.<sup>[361]</sup> Other policing practices may infringe the right to freedom from cruel, inhuman, and degrading treatment. For example, the European Court of Human Rights has found that forcing regurgitation – which causes physical pain and mental suffering – to retrieve evidence of a drug offence that could have been obtained by less intrusive methods constitutes inhuman and degrading treatment.<sup>[362]</sup>

### *Pretrial detention*

The Committee against Torture and the Special Rapporteur on torture have raised concerns about criminal laws on narcotics that provide that people arrested under such laws can be held for lengthy periods without being brought before a judge and without having access to legal counsel. They have found that such regimes leave the accused vulnerable to a high risk of torture and ill-treatment. They have thus recommended that such laws be amended and that States otherwise ensure judicial procedure guarantees as part of efforts to prevent torture.<sup>[363]</sup>

### *Prison and other closed settings*

Abuse among prisoners, from subtle forms of harassment to intimidation and serious physical and sexual attacks, are common.<sup>[364]</sup> People who use drugs and other vulnerable populations might face heightened risk of violence by other detainees, especially where States have delegated detainees with the authority to maintain discipline.<sup>[365]</sup> The employment of detainees in such disciplinary capacity violates international standards.<sup>[366]</sup> Moreover, States have a positive obligation to exercise due diligence to prevent violence among those in their custody. Inter-prisoner violence may amount to torture or ill-treatment if States fail to act with due diligence to prevent it.<sup>[367]</sup>

#### *Extradition and other forcible return or transfer*

Prohibition of the extradition and other forcible return or transfer of an individual to a country where there are substantial grounds for believing that they may face torture or cruel, inhuman, or degrading treatment or punishment by State or non-State actors is enshrined in international and regional human rights instruments. For example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressly provides that '[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'.<sup>[368]</sup>

Limits on extradition and other forms of forcible transfer under the Convention against Torture also apply where there are substantial grounds for believing that the person in question would be in danger of subjection to torture or ill-treatment at the hands of non-State actors over whom the receiving State has no or only partial de facto control, whose acts the State is unable to prevent, or who otherwise operate with impunity in the receiving State.<sup>[369]</sup> The International Covenant on Civil and Political Rights<sup>[370]</sup> and regional human rights instruments likewise protect individuals from extradition and other forms of transfer in cases of torture and cruel, inhuman, or degrading treatment or punishment.<sup>[371]</sup> The Committee against Torture has raised specific concerns that a government expelling foreigners convicted of drug trafficking and banning them from the country for a period seriously risks violating the principle of non-refoulement.<sup>[372]</sup>

#### *Health services and cruel, inhuman, or degrading treatment*

UN human rights mechanisms have concluded that the denial, removal, or discontinuation of effective drug dependence treatment, such as opioid substitution therapy, including in custodial settings, may violate the prohibition against cruel, inhuman, or degrading treatment or punishment.<sup>[373]</sup> Government failure to ensure access to controlled medicines for pain relief may also constitute cruel, inhuman, or degrading treatment or punishment, where, for example, a person's suffering is severe and meets the minimum level of severity under the prohibition against torture and ill-treatment; where the State is, or should be, aware of the person's suffering, including when no appropriate treatment was offered; and where the State failed to take all reasonable steps to protect the person's physical and mental integrity.<sup>[374]</sup> Withholding antiretroviral treatment from people living with HIV who use drugs – based on the assumption that they will not be able to adhere to said treatment – has been deemed cruel and inhuman treatment in light of the physical and psychological suffering it causes.<sup>[375]</sup>

In addition, States have an obligation to ensure that incarcerated individuals have access to the same level of health care available in the general community, including services related to drug use and drug dependence.<sup>[376]</sup> Failure to do so may amount to cruel, inhuman, or degrading treatment or punishment.<sup>[377]</sup>

#### *Independent oversight of places of deprivation of liberty*

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines 'deprivation of liberty' as 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'.<sup>[378]</sup>

International norms on the treatment of people deprived of liberty require that regular inspections of places of deprivation of liberty be performed by the administration of the institution and a body independent of it. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that States Parties 'set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment', called 'national preventive mechanisms',<sup>[379]</sup> and guarantee the functional independence and independence of the personnel of these mechanisms.<sup>[380]</sup> The Special Rapporteur on torture has recommended that States 'ensure that all places of detention are subjected to effective oversight and inspection and unannounced visits by independent bodies established in conformity with the Optional Protocol to the Convention against Torture as well as by civil society monitors; and ensure the inclusion of women and lesbian, gay, bisexual and transgender persons and other minority representation on monitoring bodies'.<sup>[381]</sup> The Special Rapporteur has also recommended that States monitor places of detention in a gender-sensitive manner<sup>[382]</sup> and 'set up operational protocols, codes of conduct, regulations and training modules for the ongoing monitoring and analysis of discrimination against women, girls, and lesbian, gay, bisexual and transgender persons with regard to access to all services and rehabilitation programmes in detention; and document, investigate, sanction and redress complaints of imbalance and direct or indirect discrimination in accessing services and complaint mechanisms'.<sup>[383]</sup>

The UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Mandela Rules) and the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the Bangkok Rules) also provide guidance on the conducting of such inspections,<sup>[384]</sup> specifying, among other things, that bodies tasked with monitoring, inspection, and supervision should include women members.<sup>[385]</sup>

### *Drug detention centres*

In some countries, people who are suspected of drug use are held in compulsory drug detention centres, often without medical evaluation, judicial review, or right of appeal and undergo detention, physical disciplinary exercises (such as military-style drills), and forced labour as 'treatment', in plain disregard of medical evidence and in violation of international human rights protections, including against torture and ill-treatment. The Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Special Rapporteurs on torture and on the right to health, and the Working Group on Arbitrary Detention have raised concerns about torture and ill-treatment in compulsory drug detention centres, calling for their immediate closure; an end to financial and technical support for such centres; prompt, thorough, impartial investigations of abuses; the prosecution of alleged perpetrators and, if found guilty, punishment commensurate with the seriousness of their acts; and adequate redress for victims.<sup>[386]</sup> In addition, the Committee on the Rights of the Child has urged the release, without delay, of children in drug detention centres and the establishment of an independent, child-sensitive mechanism to receive complaints against law enforcement officers and to provide victims with redress.<sup>[387]</sup>

The Human Rights Committee has raised concern about arbitrary arrest and detention without due process,<sup>[388]</sup> as well as compulsory detoxification, forced labour, inadequate medical care, and onerous work conditions in drug detention centres.<sup>[389]</sup> It has called for a comprehensive review of relevant laws, policies, and practices vis-à-vis drug-dependent individuals to ensure alignment with the International Covenant on Civil and Political Rights and for the introduction of effective mechanisms, with formal authority, to decide on complaints brought by people deprived of their liberty in compulsory drug detention centres.<sup>[390]</sup>

In 2012, 12 UN entities called for the immediate closure of such facilities, as well as the immediate release of those detained.<sup>[391]</sup> In 2020, 13 UN entities, recalling the 2012 joint statement on compulsory drug detention centres, likewise called on States operating compulsory drug detention centres to close them permanently without delay and to implement voluntary, evidence- and rights-based health and social services in the community as part of efforts to curb the spread of COVID-19.<sup>[392]</sup> Moreover, the UN General Assembly Special Session 2016 Outcome Document places an emphasis on people's 'voluntary participation' in treatment programmes and the need to 'prevent any possible acts of cruel, inhuman or degrading treatment or punishment' in drug treatment and rehabilitation facilities.<sup>[393]</sup>

### *Solitary confinement, judicial corporal punishment, and corporal punishment as 'treatment'*

The Committee against Torture has expressed concern about the use of solitary confinement in drug treatment centres 'when persons undergoing treatment are not "reformed through education" or do not obey discipline', among other grounds.<sup>[394]</sup> The Committee has also expressed concern about the extended use of administrative detention, such as measures of 'compulsory isolation in drug treatment centres'. It has called for the abolition of all forms of administrative detention, 'which confine individuals without due process and make them vulnerable to abuse', and for the prioritisation of community-based or alternative social-care services for people with drug dependence.<sup>[395]</sup>

The Special Rapporteurs on health and on torture have raised concerns about State-sanctioned beatings, caning, or whipping,<sup>[396]</sup> as well as 'flogging therapy'<sup>[397]</sup> in the guise of 'treatment', at compulsory drug detention centres. The UN Working Group on Arbitrary Detention has received reports of the caning of prisoners found guilty of drug trafficking or drug possession.<sup>[398]</sup> The Human Rights Committee, the Committee against Torture, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child have called for the abolition of corporal punishment, whether imposed under criminal or administrative proceedings.<sup>[399]</sup> The Human Rights Committee has stated that corporal punishment constitutes ill-treatment or punishment contrary to article 7 of the Covenant, irrespective of the nature of the crime being punished or the permissibility of corporal punishment under domestic law.<sup>[400]</sup> The Committee has also recognised that the imposition of a sentence of corporal punishment violates prohibitions against torture and ill-treatment, regardless of whether the sentence is carried out.<sup>[401]</sup> The Special Rapporteur on torture has also concluded that 'without exception', corporal punishment amounts to cruel, inhuman, or degrading punishment or torture and is absolutely prohibited in international law.<sup>[402]</sup>

### *Private actors*

The obligation to prohibit, prevent, and redress torture applies to acts by State and non-State actors alike<sup>[403]</sup> and to all contexts of custody and control, including prisons, hospitals, 'and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm'.<sup>[404]</sup> The obligation therefore extends to private facilities.



The Committee against Torture has raised concern about poor conditions in private drug treatment centres and ill-treatment inflicted upon persons admitted to them. The Committee calls for the taking of all steps necessary to prevent and punish ill-treatment in such centres and for the prompt, thorough, and effective investigation of all complaints of ill-treatment in these centres, ensuring that the persons responsible are brought to trial and, if found guilty, receive penalties commensurate with the seriousness of their acts.<sup>[405]</sup>

## **II. Obligations arising from human rights standards: 7. Freedom from arbitrary arrest and detention**

Everyone has the right to liberty and security of the person and therefore to freedom from arbitrary arrest and detention. No one shall be deprived of liberty except on such grounds and in accordance with such procedures as are established by law. Such rights apply equally to any person known to have used drugs or suspected of drug use, as well as to anyone suspected of a drug-related offence.

### **In accordance with this right, States shall:**

- i. Ensure that people are not detained solely on the basis of drug use or drug dependence.
- ii. Ensure that pre-trial detention is never mandatory for drug-related charges and is imposed only in exceptional circumstances where such detention is deemed reasonable, necessary, and proportional.

### **In addition, States should:**

- iii. Guarantee that people arrested, detained, or convicted for drug-related offences can benefit from the application of non-custodial measures – such as bail or other alternatives to pre-trial detention; sentence reduction or suspension; parole; and pardon or amnesty – enjoyed by those who are arrested, detained, or convicted of other crimes.
- iv. Prioritise diversion from prosecution for persons arrested for drug offences or drug-related offences of a minor nature.
- v. Prioritise non-custodial measures at the sentencing and post-sentencing stages for persons charged with or convicted of drug offences or drug-related offences of a minor nature.
- vi. Ensure that, where treatment is court mandated, no penalties attach to a failure to complete such treatment.
- vii. Ensure that treatment for drug dependence as an alternative to incarceration is undertaken only with informed consent and where medically indicated, and under no circumstances extends beyond the period of the applicable criminal sentence.
- viii. Take immediate measures to close compulsory drug detention centres where they exist, release people detained in such centres, and replace such facilities with voluntary, evidence-based care and support in the community.

### **Commentary**

The prohibition on arbitrary detention, including in administrative settings, is a rule of customary international law and a peremptory norm of international law.<sup>[406]</sup> Safeguards to protect the right to liberty and security of the person must apply to all detention by official action or pursuant to official

authorisation, including involuntary hospitalisation, detention for vagrancy or drug dependence, and other forms of administrative detention.<sup>[407]</sup> The right to liberty requires States to impose limits on imprisonment and other forms of deprivation of liberty.<sup>[408]</sup> Accordingly, detention should be used only as a measure of last resort and for the shortest possible period of time,<sup>[409]</sup> and alternatives to detention should be encouraged.<sup>[410]</sup> Grounds for arrest or detention must be prescribed by law and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application; otherwise, arrest or detention is unlawful.<sup>[411]</sup> Detention, even if it has a basis in law, may constitute arbitrary detention where it is random, capricious, or disproportionate – that is, not reasonable or necessary given the circumstances of the case.<sup>[412]</sup> The State Party concerned has the burden to show that detention is reasonable and necessary.<sup>[413]</sup>

Any individual deprived of liberty in any form – including for the purposes of criminal proceedings, administrative detention, involuntary confinement in medical facilities, and detention for ‘treatment for drug use – has the right to bring proceedings before a court to challenge the arbitrariness and lawfulness of the detention and to receive appropriate and accessible remedies without delay.<sup>[414]</sup> States must adopt specific measures to guarantee access to these rights to certain groups of detainees, including women, children, indigenous peoples, people who use drugs, and people living with HIV.<sup>[415]</sup> States’ drug-related policies should not permit restrictions on the safeguards of persons deprived of their liberty regarding the right to bring proceedings before a court.<sup>[416]</sup>

The presumption of innocence – whereby a person is presumed innocent until found otherwise by a competent court – is a fundamental principle of international human rights law. In accordance with this principle, pre-trial detention should be used as a last resort only.<sup>[417]</sup>

### *Arrest*

International law requires that anyone who is arrested be informed, at the time of arrest, of the reasons for their arrest; promptly informed of any charges against them; and brought promptly before a judge to determine whether the arrest was lawful.<sup>[418]</sup> The Human Rights Committee has interpreted the requirement to be brought ‘promptly’ before a judge to mean a few days from the arrest, with 48 hours ordinarily being sufficient.<sup>[419]</sup> The Committee has also stated that the individual has the right to legal assistance by the counsel of their choice in the hearing that ensues and in subsequent hearings where the judge assesses the legality of detention.<sup>[420]</sup>

The UN Working Group on Arbitrary Detention has raised concern about legislation permitting the drug testing of people arrested on suspicion of consuming illegal drugs and permitting detention in case of refusal to provide a blood or urine sample.<sup>[421]</sup> The Working Group has also raised concern about detainees who had been under the influence of drugs or alcohol at the time of arrest or interrogation, casting doubt on their capacity to understand their rights, particularly in the absence of legal representation or family members.<sup>[422]</sup> It has recommended that legislation be amended to require that drug testing be undertaken only with a warrant approved by a judicial officer and that standard operation procedures or other policies be developed to ensure that detainees are not interviewed or interrogated while they are suspected to be, or are, under the influence of drugs or alcohol; that detainees are given access to effective medical treatment to address withdrawal symptoms in detention; and that safeguards against arbitrary detention apply to all detainees, including those arrested, detained, or charged for drug-related offences.<sup>[423]</sup>

The Subcommittee on Prevention of Torture has raised concern that the practice of rewarding police by providing financial compensation for each arrest may lead to arbitrary arrests and arbitrary and unlawful detention and may increase the risk that authorities will mistreat detainees in order to

obtain confessions that corroborate or demonstrate the supposed efficiency of the police.<sup>[424]</sup> It has thus urged that such practices be eradicated.<sup>[425]</sup> The Working Group on Arbitrary Detention has raised concern about State failure to register or promptly bring before a judge people detained for drug-related offences,<sup>[426]</sup> who may be kept in custody without charge longer than others arrested for other offences and that people who use drugs may be easy targets for arrest for law enforcement officials needing to meet arrest quotas.<sup>[427]</sup> The Office of the UN High Commissioner on Human Rights has raised concern that in some countries, people arrested for drug-related offences are not registered or promptly brought before a judge and could be kept in custody without being charged for substantially longer than those detained for other offences.<sup>[428]</sup> It has also noted that in some countries, police are reported to have targeted drug users to meet arrest quotas.<sup>[429]</sup>

#### *Detention based on actual or suspected drug use or dependence*

In certain jurisdictions, people who use drugs may be subjected to administrative detention ‘without the benefit of sufficient due process, legal safeguards or judicial review’.<sup>[430]</sup> However, drug use or drug dependence alone are not sufficient grounds for detention.<sup>[431]</sup> Compulsory detention to control or treat people who illicitly use drugs is unsupported by scientific evidence, is considered a form of arbitrary detention, and places individuals at risk of torture and cruel, inhuman, and degrading treatment, as well as numerous other human rights violations.<sup>[432]</sup> The UN Working Group on Arbitrary Detention has raised concern about the frequent use of administrative detention as a means of controlling people who use drugs, particularly when such detention is framed as a health intervention.<sup>[433]</sup> It has noted that some States have incorporated such detention into national legislation based on the perception that drug use in and of itself endangers the lives of people who use drugs and the lives of others. This amounts to administrative detention based on perceived health grounds and can lead to involuntary commitment or compulsory drug dependence treatment that is inconsistent with international human rights law. It may also be contrary to medical ethics, particularly when dependence is not present and hence such treatment is not clinically indicated. The Working Group has raised particular concern about the compulsory detention of people suspected of using drugs<sup>[434]</sup> and has concluded that compulsory detention regimes using confinement or forced labour for the purposes of ‘treatment’ or ‘rehabilitation’ are contrary to scientific evidence and inherently arbitrary.<sup>[435]</sup> It has also recommended that all persons deprived of their liberty on health grounds have judicial means of challenging their detention.<sup>[436]</sup>

Other Special Procedures, including the Special Rapporteur on torture<sup>[437]</sup> and the Special Rapporteur on the right to health,<sup>[438]</sup> as well as treaty bodies, including the Committee on the Rights of the Child<sup>[439]</sup> and the Committee against Torture,<sup>[440]</sup> have raised concerns about detention as a form of drug treatment.

The Human Rights Committee has raised concern about arbitrary arrest and detention without due process,<sup>[441]</sup> as well as compulsory detoxification treatment, forced labour, inadequate medical care, and onerous work conditions in drug detention centres.<sup>[442]</sup> It has called for a comprehensive review of relevant laws, policies, and practices vis-à-vis drug-dependent individuals to ensure alignment with the International Covenant on Civil and Political Rights and for the introduction of effective mechanisms, with formal authority, to decide on complaints brought by people deprived of their liberty in compulsory drug detention centres.<sup>[443]</sup>

The Committee against Torture has raised concern about the detention of people who use drugs in manual ‘labour treatment facilities’, where people are detained without access to a lawyer or appropriate medical care, has highlighted the situation of women detainees’ lack of access to

medical care, including gynaecologists, and has urged that all forms of ‘treatment through labour’ be abolished.<sup>[444]</sup> The Committee has also raised concern about involuntary administration detention in ‘transit’ and ‘rehabilitation’ centres, where people suspected of ‘drug addiction’ face arbitrary detention for prolonged periods of time without due process.<sup>[445]</sup> The Committee has called for the release of detainees, prioritising the use of community-based or alternative social services for people with drug dependence, for investigation and prosecution of allegations of illegal detention and ill-treatment, and for adequate redress for people who have been arbitrarily detained in these facilities and for their families.<sup>[446]</sup>

### *Pre-trial detention and sentencing, alternatives to custody, and punishment reduction*

The routine use of pre-trial detention for persons suspected of drug offences contravenes the presumption of innocence and may also amount to arbitrary detention.<sup>[447]</sup> Yet in some States, judges are obliged to impose pre-trial detention or mandatory minimum sentences when convicting individuals of drug-related offences, including for the use or possession of small amounts of drugs, even where such deprivation of liberty is strictly limited for other crimes.<sup>[448]</sup> The Human Rights Committee has expressed concern about the high number of persons in pre-trial detention, the duration of which is excessive in many instances, particularly for drug-related cases, and the fact that bail is not allowed for persons arrested or held in custody for drug-related offences. The Committee has recommended that States amend their legislation to deduct the time already served in pre-trial detention from imposed sentences; guarantee that judges are authorised to decide whether to release a subject on bail; and render the payment of bail affordable to a larger number of detainees.<sup>[449]</sup> The Committee against Torture has raised concern about the number of illegal arrests for drug-related crimes and the lengthy periods of detention for such crimes. It has recommended that States adopt safeguards to ensure the justification for arrests and detention, provide training on these issues to law enforcement and the judiciary, and strengthen efforts to promote alternative and non-custodial measures to reduce the number and length of pretrial detentions. In this context, the Committee has also reminded States that pretrial detention should be used only as a last resort, in exceptional circumstances, for a limited time and in accordance with the Tokyo Rules.<sup>[450]</sup> The Inter-American Commission on Human Rights has raised concern regarding State policies that provide for the automatic pre-trial detention of people arrested for the consumption and possession of drugs for personal use, a practice incompatible with the American Convention on Human Rights.<sup>[451]</sup> The Working Group on Arbitrary Detention has raised concern about the mandatory pretrial detention of people charged with drug-related offences, noting that mandatory pretrial detention is incompatible with human rights law – which requires an individualised judicial determination regarding whether pretrial detention is reasonable and necessary – and thus cannot be justified for any offence.<sup>[452]</sup>

The UN Working Group on Arbitrary Detention has likewise raised concern about laws denying bail for those prosecuted for offences involving drug use or sale and has recommended that such laws be revised.<sup>[453]</sup> It has also raised concern that ‘in legal systems where pretrial detention is ultimately linked to bail, poverty and social marginalization appear to disproportionately affect the prospects of persons chosen to be released pending trial’.<sup>[454]</sup> This is because bail courts factor whether an accused person has ‘roots in the community’ – stable residence, financial situation, and employment, as well as being able to deposit cash or post-bond as a guarantee for appearance at trial – into their decision whether to release the person on bail. As the Working Group has noted, these criteria are often difficult to meet for poor and marginalised people, including people who use drugs;<sup>[455]</sup> and because defendants not detained pending trial have significantly better chances of being acquitted than do those detained pending trial, the bail system exacerbates the

disadvantages that poor and marginalised people face in enjoying the right to a fair trial.<sup>[456]</sup> People who cannot afford to pay bail may also plead guilty, especially on minor drug charges, so they can be released from detention.<sup>[457]</sup>

The Working Group has thus recommended that countries pursue and expand efforts to find innovative alternatives to detention on remand of accused people who lack 'strong roots in the community' and that they make available additional resources to cover unmet needs for legal aid in the criminal justice system.<sup>[458]</sup>

After conviction, sentences for drug-related offences should be proportionate to the nature of the crime,<sup>[459]</sup> with attention to a person's rehabilitative needs<sup>[460]</sup> and alternatives to detention.<sup>[461]</sup> The UN Working Group on Arbitrary Detention has raised concern about the disproportionate severity of penalties for offences relating to the sale and use of narcotics, noting that in practice, legislation geared towards combating international drug trafficking primarily is used to punish people who use drugs and small-scale traffickers, who are often from the poorest, most vulnerable communities, and that women, in particular mothers and housewives, are disproportionately affected by anti-drug legislation.<sup>[462]</sup>

The Special Rapporteur on the independence of judges and lawyers has likewise raised concern about disproportionate sentences for 'drug-abuse-related cases' and their harsh impact on young offenders and has called for the international community, including relevant UN agencies, to provide financial and technical support to establish rehabilitation programs for people convicted of drug use.<sup>[463]</sup>

The Human Rights Committee has raised concern about legislation categorically excluding people arrested or held in custody for drug sales from eligibility for bail and has recommended that such legislation be reviewed to enable judges to make case-by-case assessments on the basis of the offence committed.<sup>[464]</sup> The UN Working Group on Arbitrary Detention has raised concern about legislation barring those convicted of drug offences from sentence reduction, suspension, early release or parole, and pardons or amnesties, noting that such proscriptions can be disproportionate compared to those for other offences.<sup>[465]</sup> The Working Group has recommended that such legislation be amended to conform to international standards, including to permit the application of suspended or reduced sentences, parole, pardon, and amnesty.<sup>[466]</sup>

The Committee on Economic, Social and Cultural Rights has raised concern that excessive fines imposed on people who use drugs amount to de facto criminalisation because many people who use drugs cannot afford the fine and end up in prison.<sup>[467]</sup> The UN Working Group on Arbitrary Detention has raised concern about the impact of exorbitant fines for drug trafficking that effectively increase imprisonment for those unable to pay and has recommended that fines be set in accordance with the economic capacity, property status, or income of the person being sentenced.<sup>[468]</sup>

The Special Rapporteur on torture has raised concern about draconian laws imposing lengthy sentences for drug offences and has recommended that States review criminal legislation and sentencing policies with a view toward reducing lengthy sentences for drug offences and allowing for the provision of drug treatment as an alternative to imprisonment or punishment.<sup>[469]</sup> The UN Working Group on Arbitrary Detention has determined that when treatment for drug dependence is undertaken as an alternative to incarceration, under no circumstances may it extend beyond the period of the criminal sentence.<sup>[470]</sup> States must also guarantee that treatment for drug dependence as an alternative to incarceration is undertaken only with the free and informed

consent of the person involved, which includes the right to refuse or withdraw from treatment without penalty.<sup>[471]</sup> Such treatment must also be medically indicated, non-coercive, and tailored to the needs of the individual.<sup>[472]</sup>

The Working Group has also raised concern about the lack of judicial safeguards for people detained for offences related to personal drug use and disproportionate sentences for such offences.<sup>[473]</sup> It has recommended that States ensure that drug consumption is decriminalised in order to avoid arbitrary detention and that the involuntary confinement of those who use or are suspected of using drugs be eradicated in law and in practice.<sup>[474]</sup> It has also recommended that all persons deprived of liberty on health grounds, including people with drug dependence, have judicial means of challenging their detention.<sup>[475]</sup>

Moreover, in some States, people who are dependent on drugs can be denied their right to legal capacity and involuntarily detained for treatment on this basis. For example, the Committee on the Rights of Persons with Disabilities has raised concern about legislation that ‘permits involuntary detention for people with “mental health problems”, which may include those ‘with a “perceived disability”, such as “persons with a drug or alcohol dependence”’.<sup>[476]</sup> In such jurisdictions, if drug dependence is considered in law to be included within the definition of ‘a disability’, at least for the purposes of anti-discrimination law, the Convention on the Rights of Persons with Disabilities may add further protection against discriminatory detention on this basis.

#### *Relationship to the UN drug control conventions*

Each of the three international drug control conventions encourages, and in some instances requires, States to criminalise drug-related conduct other than that necessary for medical and scientific use and to impose penalties, including imprisonment or other deprivations of liberty, for at least some of this conduct.<sup>[477]</sup> The conventions also specify that States may adopt more ‘strict or severe’ measures of control than those provided, if such measures are necessary or desirable to protect public health or welfare<sup>[478]</sup> or to ‘suppress[] illicit traffic’,<sup>[479]</sup> thus setting a floor, but not a ceiling, for such measures. However, the drug control conventions also allow for alternatives to conviction or punishment – such as education and treatment – for personal consumption-related offences and other drug offences ‘in appropriate cases of a minor nature’.<sup>[480]</sup> States Parties therefore have discretion with regard to those cases. This is also reflected in the UN General Assembly Special Session 2016 Outcome Document.<sup>[481]</sup> When implementing these provisions, however, States should ensure simultaneous compliance with their human rights obligations in relation to arrest and detention and their alternatives.

## **II. Obligations arising from human rights standards: 8. Right to a fair trial**

Everyone has the right to equality before the law and before courts and tribunals, to defend oneself against criminal charges, and to determine one’s rights and obligations in a suit at law. These and other components of the right to a fair trial should not be infringed or limited simply because an individual is accused of illicitly using, cultivating, or trading drugs.

#### **In accordance with this right, States shall:**

- i. Guarantee to all persons accused of drug-related offences the right to a fair and public hearing, without undue delay, by a competent, independent, and impartial tribunal established by law, and



further guarantee that all such persons will be presumed innocent until proven guilty according to the law.

ii. Ensure that such persons have access to prompt, detailed information and free, good-quality legal assistance where needed, in a language and format that is accessible. This includes access to interpreters, consular assistance (where applicable), and legal counsel to defend against criminal charges.

iii. Make provision for those convicted of such offences to have their conviction and sentence reviewed by a higher tribunal according to law.

iv. Avoid extraditing or otherwise forcibly returning or transferring a person to another State to face trial for drug-related offences where that person risks serious violations of the right to a fair trial, unless provided with credible and effective assurances regarding minimum guarantees during criminal proceedings.

## Commentary

The right to a fair trial is enshrined in numerous international and regional treaties and other instruments.<sup>[482]</sup> It is imperative that this right and related rights not be infringed or violated in drug-related cases. Indeed, the UN General Assembly Special Session 2016 Outcome Document specifically calls on States to ‘ensure timely access to legal aid and the right to a fair trial’.<sup>[483]</sup> Yet there are various ways in which fair trial standards have been eroded in the context of drug law enforcement in many jurisdictions. Examples include a lack of access to legal counsel for poor or indigent defendants, sometimes even in death penalty cases; reversed burdens of proof in some drug cases, which may undermine the presumption of innocence; and the use of military or other special courts for drug trafficking cases, which may limit the rights of defendants or introduce lessened evidentiary requirements.

### *Right to legal assistance*

The right to counsel in criminal cases is protected by the International Covenant on Civil and Political Rights and in regional human rights systems.<sup>[484]</sup> According to the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, anyone detained for, arrested for, suspected of, or charged with a criminal offence punishable by imprisonment or the death penalty is entitled to legal aid at all stages of the criminal process and prior to interrogation.<sup>[485]</sup> A person charged with a criminal offence has the right to have legal assistance assigned to them in any case ‘where the interests of justice so require’ and for free in such cases if they lack the means to pay for it.<sup>[486]</sup> The gravity of the offence and the existence of an objective chance of success at the appeals stage are important factors to consider in deciding whether counsel should be assigned ‘in the interest of justice’.<sup>[487]</sup> In cases involving the death penalty, the accused has a right to effective assistance of counsel at all stages of the proceedings.<sup>[488]</sup> The Human Rights Committee notes that, in addition, ‘States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so’.<sup>[489]</sup> However, where free legal services exist in theory, in practice they are often underfunded and inadequate, providing a mere veneer of access instead of substantial protection of legal rights.<sup>[490]</sup> Special measures should therefore be taken to ensure meaningful access to legal aid for groups with special needs, such as minorities and those who are members of other economically and socially disadvantaged groups, including people who use drugs.<sup>[491]</sup>

In addition, the International Court of Justice has held that under article 36 of the Vienna Convention on Consular Relations, States that arrest, detain, or commit to custody a foreign national must promptly inform the consular post that a national of the foreign State has been detained. The State must also inform the detainee of their right to meet with the relevant consular officer regarding their detention and their right to legal representation.<sup>[492]</sup> This rule applies *mutatis mutandis* to drug-related cases.

### *Burden of proof*

Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.<sup>[493]</sup> In many jurisdictions, it is common practice to reverse the burden of proof in some types of drug cases. For example, persons arrested with a quantity of drugs exceeding certain thresholds are presumed to be trafficking, unless they can prove otherwise. Similarly, a person found in a dwelling where drugs are found is presumed to be knowingly in possession of those drugs. Domestic courts in a number of jurisdictions have raised concerns about reverse onus provisions applicable to drug cases on the basis that they violate constitutional guarantees to a presumption of innocence in criminal proceedings.<sup>[494]</sup>

The Human Rights Committee has raised concern about allegations that plea-bargaining systems have been used to extort money from 'drug offenders', a practice that takes place in the context of the criminalisation of drug use, zero-tolerance drug policies, and insufficient legal safeguards for defendants. It has recommended the reform of zero-tolerance drug policies, including by calling on States to adopt a human rights approach to drug use, with a focus on appropriate health care, psychological support, and rehabilitation, including drug dependence treatment (such as opioid substitution therapy) and harm reduction programmes.<sup>[495]</sup>

### *Right to remain silent*

The right of everyone, including those charged with a criminal offence, to remain silent and not to be compelled to incriminate themselves or to confess guilt is protected by the International Covenant on Civil and Political Rights and in regional human rights systems.<sup>[496]</sup> The Human Rights Committee has noted that these safeguards 'must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt' and that it is thus unacceptable to use torture or ill-treatment to extract a confession. The Committee therefore advises States to ensure that their domestic law excludes from evidence statements or confessions obtained through torture or ill-treatment and further notes that States have the burden to prove that statements by the accused have been given of their own free will.<sup>[497]</sup> The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recommend that States introduce measures to promptly inform every person detained for, arrested for, suspected or accused of, or charged with a criminal offence of their right to remain silent.<sup>[498]</sup>

### *Special courts*

Some countries have used military tribunals or other types of special courts to try drug cases, particularly drug trafficking cases.<sup>[499]</sup> However, the jurisprudence and general comments of human rights treaty bodies, as well comments by Special Rapporteurs, make clear that trials of civilians in military courts should be exceptional.<sup>[500]</sup>

According to the Human Rights Committee, trials of civilians in military courts should be 'limited to cases where the State party can show that resorting to such trials is necessary and justified by

objective and serious reasons, and where, with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials'.<sup>[501]</sup> In such trials, fair trial guarantees 'cannot be limited or modified because of the military or special character of the court concerned'.<sup>[502]</sup> In this regard, the Special Rapporteur on the independence of judges and lawyers has concluded that the trial of civilians in military tribunals 'should be limited strictly to exceptional cases concerning civilians assimilated to military personnel by virtue of their function and/or geographical presence who have allegedly perpetrated an offence outside the territory of the State and where regular courts, whether local or those of the State of origin, are unable to undertake the trial'.<sup>[503]</sup> The Working Group on Arbitrary Detention has specifically recommended that States '[e]nsure that military authorities are not, in principle, involved in drug enforcement activities'.<sup>[504]</sup>

Otherwise, military court jurisdiction should be limited to military personnel who have committed military offences or breaches of military discipline and only when those offences or breaches do not amount to serious human rights violations. Ordinary courts should thus have sole jurisdiction over cases involving alleged human rights violations by military personnel, and military courts should not have jurisdiction over civilian cases.<sup>[505]</sup> The Human Rights Committee and the Committee against Torture have recommended that States remove the power to exercise jurisdiction over civilians from military courts 'without further delay'.<sup>[506]</sup> and – along with the Committee against Torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence, and the Special Rapporteur on violence against women – that they take measures, including through the adoption or amendment of legislation, to preclude the possibility that military courts could have jurisdiction over cases involving human rights violations and offences against civilians in which military personnel are involved and to guarantee that the investigation and jurisdiction of cases involving gross violations of human rights, including those with the alleged involvement of military and security forces, are investigated and prosecuted under the ordinary civilian justice system.<sup>[507]</sup>

In some jurisdictions, 'drug treatment courts' or 'drug courts' are presented as an alternative to incarceration and are meant to offer court-supervised treatment for drug dependence for people who would otherwise go to prison for a drug-related offence. The Special Rapporteurs on the right to health and on the independence of judges and lawyers have raised concerns that the delivery of essential health care through the justice system – whereby judges and others who are not trained medical personnel make health care decisions – raises several human rights concerns, including with respect to procedural due process, informed consent, patient confidentiality and autonomy, and privacy.<sup>[508]</sup> In this context, they have recommended that States take cautions against the continued rollout of drug courts in countries where oversight and monitoring mechanisms are absent.<sup>[509]</sup> Several members of the UN Working Group on Arbitrary Detention have similarly highlighted reservations about respect to the right to fair trial in proceedings before drug courts.<sup>[510]</sup> The Office of the UN High Commissioner for Human Rights has also raised concern that human rights violations in the drug court system were exacerbated by racial and gender biases.<sup>[511]</sup>

### *Undue delay*

Where arrested persons are subjected to long periods of pre-trial detention, this affects their right to a fair trial without 'undue delay'.<sup>[512]</sup> The UN Working Group on Arbitrary Detention has found that people who use drugs are particularly at risk in this regard.<sup>[513]</sup> Some States reportedly provide for the automatic pre-trial detention of persons arrested for drug use, even though the Inter-American Commission on Human Rights has declared this practice incompatible with human rights law.<sup>[514]</sup>

In addition, where pre-trial detainees are housed in poor or overcrowded conditions that fail to meet minimum basic custodial standards,<sup>[515]</sup> this may violate fair trial rights by undermining the principle of equality of arms. According to the UN Working Group on Arbitrary Detention, '[a] detainee who has to endure detention conditions that affect their health, safety or well-being is participating in the proceedings in less favourable conditions than the prosecution ... Where conditions of detention are so inadequate as to seriously weaken the pre-trial detainee and thereby impair equality, a fair trial is no longer ensured'.<sup>[516]</sup>

### *Extradition*

Depending on the circumstances, extradition to face trial for drug offences may be refused where serious violations of fair trial rights are anticipated in the requesting State. In particular, extradition shall not be granted 'if the person whose extradition is requested has not received or would not receive the minimum guarantees in criminal proceedings'.<sup>[517]</sup> It may also be refused where the person whose extradition is requested 'had suffered or risked suffering a flagrant denial of a fair trial in the requesting country',<sup>[518]</sup> such as the risk that evidence obtained through torture would be admitted in a criminal trial; a conviction in absentia with no possibility of fresh determination of the merits of the charge; a summary trial conducted with total disregard for the defendant's rights; detention without access to an independent and impartial tribunal to review the legality of the detention; and the deliberate, systematic refusal of access to a lawyer.<sup>[519]</sup>

Assurances may be provided by the requesting State to overcome barriers to extradition posed by the risk of serious violations of fair trial rights. These may be acceptable only if, in the circumstances, they constitute a suitable means to eliminate the danger to the individual concerned and are considered by the requested State to be reliable and given in good faith.<sup>[520]</sup> Acceptable examples include assurances that the person being sought, if they have been convicted in the requesting State in absentia, will have the opportunity upon surrender to have the case retried in their presence; and assurances that the person being sought, if liable to be tried or sentenced in the requesting State by an extraordinary court or tribunal, will receive a judgement by an independent and impartial court that is generally empowered under the rules of judicial administration to pronounce on criminal matters.

### *Relationship to the UN drug control conventions*

Over time, the use of criminal law, policing, and courts has become a primary tool of drug control. This is reflected in the adoption and implementation of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which codifies the expanded application of criminal law for this purpose.<sup>[521]</sup> In this context, increased numbers of criminal convictions are often considered indicators of successful drug control efforts and treaty compliance at the country level. This requires careful attention to simultaneous human rights obligations relating to fair trial standards, which are not addressed in detail in the 1988 Convention.

## **II. Obligations arising from human rights standards: 9. Right to privacy**

Everyone has the right to privacy, including people who use drugs.

**In accordance with this right, States should:**

- i. Adopt legislative, administrative, and other measures to prevent arbitrary and unlawful interference with the privacy, family life, home, and correspondence of people who use drugs.
- ii. Ensure the protection of the right to privacy in relation to criminal investigations for drug-related offences.
- iii. Adopt legislative and other measures to prevent the disclosure of individuals' personal health data, including drug test results and drug dependence treatment histories, without their free and informed consent.
- iv. Ensure that welfare conditionalities and administrative requirements to access rights and benefits do not unlawfully, unnecessarily, or disproportionately infringe the privacy of those who use drugs.

**In addition, States may:**

- v. Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.

**Commentary**

The right to privacy is protected in a number of international and regional instruments.<sup>[522]</sup> For example, the International Covenant on Civil and Political Rights prohibits arbitrary and unlawful interference with a person's privacy and requires protection of the law against such interference.<sup>[523]</sup> The right to privacy is also a key component of other rights.<sup>[524]</sup> For example, the right to health includes the obligation to ensure that health care providers respect confidentiality in health care settings and to otherwise protect the confidentiality of personal health information.<sup>[525]</sup> State measures compelling the communication or disclosure of personal health information without the individual's consent must be strictly justified.<sup>[526]</sup>

Domestic courts in several countries have ruled that the criminalisation of drug possession and cultivation for personal use violates the right to privacy as protected by their respective constitutions.<sup>[527]</sup> Other examples of potential infringements of this right with regard to drug policy include special investigative techniques used in drug enforcement operations, the use of personal health data derived from drug testing and treatment records, welfare conditionalities, and the requirement to be placed on a government registry to receive harm reduction services or drug dependence treatment.

*Investigations*

Special investigative techniques that can be used in drug-related cases may give rise, under certain circumstances, to concerns about the impermissible infringement of the right to privacy. Through its case law on secret measures of surveillance, the European Court of Human Rights has developed a set of minimum statutory safeguards to avoid abuses of power and comply with human rights standards, including with respect to the right to privacy. The safeguards define the nature of the offences that may give rise to a surveillance order; categories of people liable to be subject to any such measure; the duration of any such measure; the procedure to be followed for examining, using, and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed. In addition, the Court has established that the body issuing authorisations for surveillance orders should be independent<sup>[528]</sup> and that there should be a form of judicial control or control by an independent body over the issuing body's activity.<sup>[529]</sup> Interceptions ordered by the public prosecution, without the possibility of an a priori control by a judicial officer, do not meet the required standards of independence.<sup>[530]</sup>

In its jurisprudence regarding the interception of communications, the European Court of Human Rights defines the following minimum safeguards for statutory regulation: a definition of the categories of people liable to have their telephones tapped by judicial order; the nature of the offences that may give rise to such an order; a limit on the duration of telephone tapping; a procedure for drawing up summary reports containing intercepted communications; the precautions to be taken in order to communicate the recordings intact and in their entirety for possible inspection by the judge and defence; and the circumstances in which recordings may or must be destroyed, particularly where the accused has been discharged by an investigating judge or acquitted by a court.<sup>[531]</sup>

#### *Health data, drug testing, and drug treatment*

According to the Human Rights Committee, the gathering and holding of personal information on computers, data banks, and other devices by public authorities or private individuals must be regulated by law. States must take effective measures to ensure that information about a person's private life is not obtained by people not authorised by law to receive, process, and use it. Everyone should have the right to ascertain whether and what personal data is stored in data files and which public authorities or private individuals control or may control their files.<sup>[532]</sup>

UN human rights mechanisms have raised concerns that the disclosure of private, confidential information about a person's health status may drive people away from seeking medical attention or drug dependence treatment, out of fear that their illicit drug use will be shared with law enforcement or other State authorities, possibly leading to arrest, imprisonment, greater police attention, or further ill-treatment by health providers, including the imposition of drug dependence 'treatment' without their consent.<sup>[533]</sup> In some jurisdictions, government drug treatment clinics establish registries of people seeking treatment and share this information with law enforcement and other government agencies. This violates the obligation to protect the confidentiality of personal health information<sup>[534]</sup> and may deter people from seeking treatment.<sup>[535]</sup> In addition, people from whom such data are collected should be informed – at or prior to the time of collection – of the intended purpose for which the information is being collected, the reasons why it has been requested, and whether it will be shared with government institutions.<sup>[536]</sup>

The Special Rapporteur on the right to health has found that 'a lack of confidentiality may deter individuals from seeking advice and treatment, thereby jeopardizing their health and well-being. Thus, States are obliged to take effective measures to ensure medical confidentiality and privacy'.<sup>[537]</sup> The Committee on the Elimination of Discrimination against Women has likewise observed that 'while lack of respect for the confidentiality of patients will affect both men and women', it may especially 'deter women from seeking advice and treatment' such as 'medical care for diseases of the genital tract, for contraception or for incomplete abortion and in cases where they have suffered sexual or physical violence'.<sup>[538]</sup> This may be especially true for poor and otherwise marginalised women who use drugs. The Supreme Court of Argentina has ruled that health care professionals' disclosure of confidential information about drug ingestion for use by the police as evidence of drug trafficking violates the right to medical confidentiality, derived from the constitutional right to privacy.<sup>[539]</sup>

#### *Welfare conditionality*

The Committee on Economic, Social and Cultural Rights has expressed concern that conditioning welfare benefits on the results of a drug test lacks a credible evidence base and may deepen stigma against people who use drugs and drive them away from treatment.<sup>[540]</sup> Such interference with the



right to privacy may be lawful in the narrow sense of being pursuant to national law and involving the consent of the person tested, but it may have an unlawful discriminatory impact on people based on their sex or health or economic status.<sup>[541]</sup> Courts in the United States have held the mandatory or random drug testing of welfare recipients, absent a reasonable suspicion of drug use, to be an unconstitutional violation of privacy protections.<sup>[542]</sup>

### *Right to privacy and the internet*

The UN General Assembly has raised concern that ‘unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and freedom of expression and may contradict the tenets of a democratic society’. It has also noted that ‘while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law’.<sup>[543]</sup> The Office of the UN High Commissioner for Human Rights has stated that inadequate national legislation and enforcement, weak procedural safeguards, and ineffective oversight have contributed to a lack of accountability for arbitrary or unlawful interference in the right to privacy. It has emphasised the need for States to ensure that their laws, policies, and practices conform with international human rights law and to ensure that effective and independent oversight mechanisms are in place.<sup>[544]</sup>

The UN General Assembly Special Session 2016 Outcome Document recommends a number of measures to support the use of the internet to address drug trafficking, money laundering, and other illicit drug-related activities.<sup>[545]</sup>

### *Relationship to the UN drug control conventions*

There is sufficient flexibility in the drug control conventions to decriminalise possession and other activities related to the personal consumption of controlled substances, even if not for medical or scientific purposes. The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires only that each State Party establish criminal liability for the intentional ‘possession, purchase or cultivation of drugs for personal consumption’ that is ‘contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention’ (e.g., for non-medical or non-scientific use).<sup>[546]</sup> This obligation is further subject to any ‘constitutional limitations’ of the State Party<sup>[547]</sup> and to the ‘constitutional principles and basic concepts of [the State Party’s] legal system’.<sup>[548]</sup> States therefore have the latitude to determine whether imposing criminal liability and sanctions for drug possession, purchase, or cultivation for personal consumption contravenes constitutional provisions or otherwise offends against the basic concepts of their legal system, including in relation to the right to privacy.

## **II. Obligations arising from human rights standards: 10. Freedom of thought, conscience, and religion**

Everyone has the right to freedom of thought, conscience, and religion, which includes the freedom to manifest one’s religion or belief, either individually or in community with others, in public or private. This right applies to those for whom such manifestations may involve the use of drugs for religious or spiritual purposes.

**In accordance with this right, States may:**

i. Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.

**In addition, States should:**

ii. Consider exemptions within drug legislation allowing the cultivation and use of controlled substances for religious purposes, including in rituals and ceremonies.

**Commentary**

International human rights law protects both the right to hold certain beliefs and the right to manifest those beliefs.<sup>[549]</sup> Furthermore, the International Covenant on Civil and Political Rights specifically provides for the protection of the rights of ethnic, religious, and linguistic minorities, in community with other members of their group, to profess and practise their religion. The Human Rights Committee has noted that prisoners should continue to enjoy their right to manifest their religion or belief to the fullest extent compatible with the specific nature of their imprisonment.<sup>[550]</sup> The International Labour Organization's Indigenous and Tribal Peoples Convention similarly requires States to protect 'the social, cultural, religious and spiritual values and practices' of indigenous peoples and the integrity of these practices.<sup>[551]</sup>

While the right to have or adopt a religion or belief is unconditional, the manifestation of one's beliefs may be subject to limitations in the interests of public health, public order, or the protection of the rights of others.<sup>[552]</sup> (See Section V.2.) Some jurisdictions have recognised exceptions to domestic drug control norms on grounds of religious belief, although the scope of the right and what it requires of States has been contentious. Jamaica has amended its legislation to allow Rastafarians the right to use cannabis in their religious ceremonies.<sup>[553]</sup> In Italy, a drug conviction was reversed on appeal because a lower court had not considered the arguments made by a Rastafarian defendant based on his religious beliefs.<sup>[554]</sup> In 2002, a challenge to South Africa's general prohibition on cannabis use without an exemption for Rastafarians' religious use did not succeed.<sup>[555]</sup> The case reached the Human Rights Committee, which recognised that 'the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various acts integral to such acts' and that 'the use of cannabis is inherent to the manifestation of the Rastafari religion'. But the Committee ultimately found that the prohibition of cannabis without a religious exemption was not a disproportionate limitation on the right to freedom of religion.<sup>[556]</sup> It should be noted that in subsequent proceedings, the same prohibition on the use, possession, and cultivation of cannabis for personal consumption was declared invalid by the South African Constitutional Court because it infringed constitutional protections on the right to privacy.<sup>[557]</sup> Thus, there are indications of jurisprudence evolving over time.

*Relationship to the UN drug control conventions*

In addition to establishing the general obligation to limit the use of narcotic drugs strictly to medical and scientific purposes,<sup>[558]</sup> the 1961 Single Convention on Narcotic Drugs requires that States abolish a range of traditional practices, including traditional uses of coca leaves, the quasi-medical use of opium, and traditional and religious uses of cannabis.<sup>[559]</sup> This prohibition creates a degree of tension with the human right to freedom of religion. However, the 1971 Convention on Psychotropic Substances is more open. Although it prohibits the use of Schedule I substances except for scientific and very limited medical purposes,<sup>[560]</sup> the Convention also permits States 'on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites' to submit a reservation to exempt them from the relevant provisions, except for those provisions

relating to international trade.<sup>[561]</sup> Canada, Mexico, Peru, and the United States submitted reservations for these traditional uses when they signed the Convention.<sup>[562]</sup> Moreover, States need not criminalise traditional or religious practices that fall outside of international prohibitions and may utilise the flexibilities under the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to decriminalise the possession, purchase, and cultivation of controlled substances for personal consumption.<sup>[563]</sup>

## II. Obligations arising from human rights standards: II. Right to enjoy cultural life

Everyone has the right to enjoy cultural life. This right applies equally to all without discrimination, including people who use drugs recreationally, people who use drugs for cultural, spiritual, or religious purposes, people who need controlled substances for medical purposes, and people who cultivate illicit drug crops as a traditional way of life.

**In accordance with this right, States should:**

- i. Refrain from discriminatory and otherwise unnecessary or disproportionate interference with the exercise of cultural practices and with access to cultural goods and services on grounds of drug control law and policy.
- ii. Take necessary measures to ensure the preconditions for participation in, facilitation of, and promotion of cultural life without discrimination, including access to and preservation of cultural goods where these involve controlled plants and substances.
- iii. Foster a rich and diverse cultural life through the conservation, development, and diffusion of culture and by ensuring the participation of relevant communities in the governance of cultural heritage, including where these involve controlled plants and substances.

### Commentary

The right of everyone to take part in cultural life is enshrined in numerous international and regional human rights instruments.<sup>[564]</sup> It is a right that has both individual and collective dimensions<sup>[565]</sup> and entails both negative and positive State obligations.<sup>[566]</sup> The Committee on Economic, Social and Cultural Rights considers that culture encompasses, inter alia, 'ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives'.<sup>[567]</sup> While there is no universal definition of 'culture', a range of UN human rights mechanisms have interpreted it to include knowledge of seeds, knowledge of the properties of flora and fauna, agricultural practices, and other economic activities that are relevant to the traditional farming and uses of controlled plants.<sup>[568]</sup>

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage obligates States to 'take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory'.<sup>[569]</sup> The Convention, whose objective is to raise awareness of and respect for intangible cultural heritage, establishes the creation of formal lists to promote the safeguarding of intangible cultural practices. To date, these lists recognise the traditional knowledge of shamans,

including sacred practices involving coca and peyote.<sup>[570]</sup> This means that some States may have a competing set of international obligations to both protect and abolish intangible cultural heritage.

Within the framework of safeguarding intangible cultural heritage, States have an obligation ‘to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management’.<sup>[571]</sup> Therefore, to support the safeguarding of certain plants under international control that may also be considered intangible cultural heritage, governance mechanisms led by affected traditional farming communities should be considered.

#### *Relationship to the UN drug control conventions*

The 1961 Single Convention on Narcotic Drugs requires that States abolish a range of traditional practices, including traditional uses of coca leaves, the quasi-medical use of opium, and traditional and religious uses of cannabis.<sup>[572]</sup> In addition, the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires States to criminalise the possession, purchase, and cultivation of coca, opium, and cannabis for personal non-medical consumption and to take measures to prevent the cultivation of, and to eradicate, illicit drug crops.<sup>[573]</sup> While these provisions may in some cases create tensions with concomitant obligations to respect and protect cultural life, including intangible cultural heritage, States nevertheless also have some scope for harmonisation. For example, in implementing their eradication obligations under the 1988 Convention, States must ‘take due account of traditional licit uses, where there is historic evidence of such use’.<sup>[574]</sup>

Finally, in contrast to the 1961 Single Convention on Narcotic Drugs, neither the 1971 Convention on Psychotropic Substances nor the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances includes control measures for plants. Only some active stimulant and hallucinogenic ingredients contained in certain plants are controlled under the 1971 Convention. Furthermore, the International Narcotics Control Board has acknowledged that some plants containing psychoactive substances with stimulating or hallucinogenic properties that are scheduled under the 1971 Convention, as well as preparations made from those plants, are not subject to international control.<sup>[575]</sup>

## **II. Obligations arising from human rights standards: 12. Freedom of opinion, expression, and information**

Everyone has the right to freedom of opinion and expression, which includes the right to seek, receive, and impart information and ideas of all kinds through any media of choice. It also includes the right to hold opinions, express ideas, and seek, receive, and impart information about drugs and drug policy.

### **In accordance with this right, States should:**

i. Take all necessary legislative, administrative, and other measures to ensure full enjoyment of the rights to freedom of opinion, expression, and information about matters related to drug laws, policies, and practices, including information and opinions regarding health services for people who use drugs (such as harm reduction interventions); the composition of controlled drugs; the value, meaning, and benefits of traditional, cultural, and religious uses of substances; the human rights of people who use drugs or are otherwise involved in drug-related activities; and reforms to such laws, policies, and practices.

ii. Provide accurate and objective information about drug laws, policies, and regulations; drug-related harms; and drug-related health goods, services, and facilities.

iii. Refrain from censoring or restricting access, including through the application of criminal or other sanctions, to scientific and health-related information about drugs, drug use, drug-related harms, and goods, services, and facilities aimed at preventing or reducing such harms, and refrain from otherwise withholding or intentionally misrepresenting such information.

## Commentary

The right to freedom of opinion and expression is guaranteed by numerous human rights instruments.<sup>[576]</sup> The International Covenant on Civil and Political Rights requires protection of the right to hold opinions without interference and permits no exception or restriction.<sup>[577]</sup>

The Special Rapporteur on freedom of opinion and expression, the Human Rights Council, and the General Assembly have affirmed that the rights to freedom of opinion and expression and other rights apply equally online.<sup>[578]</sup> The Special Rapporteur on freedom of opinion and expression notes that the right to freedom of expression and opinion is an ‘enabler’ that facilitates the exercise of other rights, including the rights to health, to education, to take part in cultural life, to enjoy the benefits of scientific progress and its applications, and to association and assembly.<sup>[579]</sup> The right to information is part of the right to freedom of expression and is also necessary to realise the right to health and other rights. State restriction, control, manipulation, or censorship of information ‘without any legal basis, or on the basis of broad and ambiguous laws, without justifying the purpose of such actions; and/or in a manner that is clearly unnecessary and/or disproportionate to achieving the intended aim’ may create a ‘chilling effect’ on the right to freedom of opinion and expression, in violation of international human rights law.<sup>[580]</sup> The Special Rapporteur on freedom of opinion and expression notes that ‘the arbitrary use of criminal law to sanction legitimate expression constitutes one of the gravest forms of restriction to the right’ that may lead to ‘other human rights violations, such as arbitrary detention and torture and other forms of cruel, inhuman or degrading treatment or punishment’.<sup>[581]</sup>

The Special Rapporteur on cultural rights has noted that ‘States and other stakeholders often refer to the necessity of regulating the dissemination of artistic expressions deemed to, for example ... amount to drug propaganda’. The Special Rapporteur has advised that these concerns need to be addressed in compliance with permissible limits on freedom of expression and has encouraged States, when applying these standards, to take into consideration the specific nature of artistic expressions and creations. The Special Rapporteur has noted that ‘through their expressions and creations, artists often question our lives, perceptions of ourselves and others, world visions, power relations, human nature and taboos, eliciting emotional as well as intellectual responses’, that ‘the resort to fiction and the imaginary must be understood and respected as a crucial element of the freedom indispensable for creative activities and artistic expressions’, and that artists ‘should be able to explore the darker side of humanity, and to represent crimes or what some may consider as “immorality”, without being accused of promoting these’.<sup>[582]</sup>

States have a positive obligation to ensure that people who use drugs and their peers can obtain and impart complete and accurate information necessary to protect their health, lives, and liberty, including information about drug-related harm, including overdose and blood-borne diseases such as HIV; harm reduction and drug dependence treatment services; other drug-related health goods, facilities, and services; and drug law and policy. States should ensure that such information is accessible to everyone without discrimination and refrain from interfering in its dissemination.<sup>[583]</sup> Laws that censor or restrict access to such information and penalise its dissemination – such as laws

proscribing 'drug propaganda' or the 'incitement', 'encouragement', or 'aiding and abetting' of drug use – violate protections of the right to freedom of expression and information.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms protects the right of everyone, individually and in association with others, 'to develop and discuss new human rights ideas and principles and to advocate their acceptance'.<sup>[584]</sup> This elaborates on the rights to freedom of opinion and expression and to freedom of peaceful assembly and association.<sup>[585]</sup>

#### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires that States, subject to constitutional limitations, criminalise '[p]ublicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly'.<sup>[586]</sup> The Commentary on the 1988 Convention recognises that this provision is 'widely drawn' and that the wording of encouragement 'by any means' is very broad. Originally born of a concern 'about magazines and films glorifying drug use',<sup>[587]</sup> today it could also cover websites. Implementing this provision requires close attention to concomitant guarantees of freedom of expression.<sup>[588]</sup>

The UN General Assembly Special Session 2016 Outcome Document includes a section on the use of the internet for drug-related activities that includes recommendations on steps to take 'to prevent and counter drug-related criminal activities using the Internet, consistent with relevant and applicable law'.

## **II. Obligations arising from human rights standards: 13. Freedom of association and peaceful assembly**

Everyone has the rights to freedom of association and peaceful assembly. This includes the right to plan, organise, promote, and advertise peaceful marches, protests, and other types of gatherings to express views and advocate for or against changes in drug laws, policies, and practices, and the right to form and join organisations that advocate on matters related to drug laws, policies, and practices or are dedicated to working with individuals or groups affected by drugs and drug control efforts.

#### **In accordance with this right, States should:**

- i. Take all necessary legislative, administrative, and other measures to ensure full enjoyment of the rights to freedom of association and peaceful assembly with respect to drug laws, policies, and practices.
- ii. Refrain from requiring prior authorisation to hold a peaceful assembly regarding drug laws, policies, and practices, and exempt such spontaneous assemblies from prior notification procedures.
- iii. Permit associations that advocate on matters related to drug laws, policies, and practices and that work with individuals and groups affected by drugs and drug control efforts, including unregistered associations, to receive and utilise financial contributions from domestic, foreign, and international sources.

#### **Commentary**



The rights to freedom of association and peaceful assembly are guaranteed in numerous international instruments.<sup>[589]</sup> These political rights play an important role in empowering individuals, including those who are members of marginalised groups, to claim their rights, including the right to participation, and States have a positive obligation to actively protect and facilitate their exercise.<sup>[590]</sup> Yet in many jurisdictions, individuals who belong to marginalised communities, as well as those who advocate for the rights of such communities, particularly community-led organisations, face stigma, discrimination, legislative barriers, and harassment from State and non-State actors that impede their exercise of the rights to freedom of association and peaceful assembly.<sup>[591]</sup> Civil society activists and human rights defenders are especially at risk of violations and abuse in the exercise of these rights.<sup>[592]</sup> This is also frequently the case for those who advocate for the rights of people who use drugs and for the rights of communities affected by drug control efforts, including in particular community-led organisations.

States have an obligation to refrain from unduly interfering with the exercise of the rights to peaceful assembly and association and to facilitate the exercise of these rights.<sup>[593]</sup> States should make specific efforts to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination.<sup>[594]</sup> The exercise of the right to freedom of assembly should not be subject to a general requirement of prior authorisation.<sup>[595]</sup> While international human rights law also does not require advance notification of assembly, in certain specific circumstances such notice may be needed in order to enable State authorities to take measures to protect public safety and order and to ensure the rights and freedoms of others.<sup>[596]</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association recommends that prior notification be required only for large meetings and meetings that may disrupt road traffic.<sup>[597]</sup> Furthermore, spontaneous assemblies should be recognised in law and exempted from prior notification.<sup>[598]</sup> Failure to notify authorities should not result in the automatic dissolution of an assembly or subject organisers to criminal sanctions or administrative sanctions resulting in fines or imprisonment.<sup>[599]</sup> These standards apply equally to peaceful assemblies concerning drug laws, policies, and practices.

The right to freedom of association includes the right to form and join an association and applies equally to everyone, including registered and unregistered entities, people belonging to minority groups, groups at risk, community-led organisations, and human rights defenders.<sup>[600]</sup> States should ensure that no one, including those involved in unregistered organisations, is criminalised for exercising the right to freedom of association.<sup>[601]</sup> States should put in place procedures that permit associations to be established after completing a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation for denying registration of an association, and such decisions should be open to challenge before an impartial, independent court.<sup>[602]</sup>

The Committee on the Elimination of Discrimination against Women has noted with concern that insufficient funding of non-governmental organisations, including women's non-governmental organisations, makes it difficult for them to build capacity to support women's human rights. The Committee has thus recommended that States 'develop clear criteria for rendering and ensuring governmental financial support on the national and local level for the work of women's non-governmental organizations'.<sup>[603]</sup> UN human rights mechanisms have likewise acknowledged that the ability of civil society associations to access funding, whether from domestic, foreign, or international entities, is an integral part of the right to freedom of association.<sup>[604]</sup> Domestic funding to support non-governmental organisations may be limited or non-existent in many countries, often making access to funds from international donors and other international sources crucial to the existence of those organisations.<sup>[605]</sup> Funding restrictions, whether domestic or international, may

also disproportionately affect associations that promote unpopular views.<sup>[606]</sup> UN human rights mechanisms recommend that funds for the purpose of defending human rights be ensured and facilitated by law and that States permit non-governmental organisations to access foreign funding, restricting such access only in the interest of transparency and as required under generally applicable foreign exchange and customs laws.<sup>[607]</sup> These standards apply equally to associations that advocate on matters related to drug laws, policies, and practices and to associations that work with, or are led by, individuals and groups affected by drugs and drug control efforts.

### III. Obligations Arising from the Human Rights of Particular Groups: 1. Children

Children have the right to protection from drugs and exploitation in the drug trade. They have the right to be heard in matters concerning them with due regard for their age and maturity, and their best interests shall be a primary consideration in drug laws, policies, and practices.

**In accordance with these rights, States shall:**

i. Take all appropriate measures, including legislative, administrative, social, and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances. 'Appropriate measures' are evidence based and compliant with wider human rights norms.

**To facilitate the above, States should:**

ii. Obtain and disseminate age-disaggregated data on drug use and related harms and on the nature of children's involvement in the illicit drug trade.

#### Commentary

Almost all States have ratified or acceded to the Convention on the Rights of the Child, which has 196 States Parties. It provides that children – defined as anyone under the age of 18 unless under the applicable national law the age of majority is achieved earlier<sup>[608]</sup> – shall be protected from the illicit use of narcotic drugs and psychotropic substances and from being exploited or 'used' in the illicit drug trade.<sup>[609]</sup> It is one of the only instruments in international human rights law to refer explicitly to drugs. The drug trade is also a subject of the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>[610]</sup>

The Convention on the Rights of the Child's provision on protection from drugs is broadly framed, engaging a wide range of children's rights, including the right to health.<sup>[611]</sup> Protection from drugs must therefore be understood in the light of the Convention as a whole, in conformity with its generally 'holistic' approach. The provision requires that 'appropriate measures' be undertaken. While this phrase is lacking in sufficient detail, it is a general obligation of due diligence. Moreover, the Commission on Narcotic Drugs has stated that measures to protect children must be evidence based and compliant with children's rights.<sup>[612]</sup> This general test reflects approaches to other rights in the Convention.<sup>[613]</sup>

Children have the right to have their best interests taken into account in all matters that affect them.<sup>[614]</sup> They have the right to be heard in such matters, with 'the views of the child being given due

weight in accordance with the age and maturity of the child'.<sup>[615]</sup> These are considered two of the four 'general principles' of the Convention that underpin the interpretation of all other articles, including in relation to child health.<sup>[616]</sup>

The Committee on the Rights of the Child has consistently made recommendations on drug-related issues to individual States and has addressed drug-related issues across its general comments, from adolescent health to children in street situations to children's right to health.<sup>[617]</sup>

States should collect and disseminate age-disaggregated data on drug use and involvement in the drug trade. This requirement flows from children's right to health,<sup>[618]</sup> the right to protection from drugs,<sup>[619]</sup> and protection from discrimination.<sup>[620]</sup> This has been a consistent recommendation of the Committee on the Rights of the Child.<sup>[621]</sup> Age disaggregation for those under 18 – or legal minors by national standards – is required to capture the age group for whom child rights law and child protection standards apply. Nonetheless, data on drug use and related harms among children are generally poor in all but the highest-income countries.

Further guidance on implementing the Convention is available in the Committee on the Rights of the Child's general comment on the 'general measures of implementation'.<sup>[622]</sup>

#### *Relationship to the UN drug control conventions*

The Convention on the Rights of the Child refers to the protection of children from the illicit use of narcotic drugs and psychotropic substances 'as defined in the relevant international treaties'.<sup>[623]</sup> At the time of the Convention's drafting, the treaties in force were the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. The reference to these treaties was intended to indicate those substances from which children should be protected under this provision, not the kinds of interventions that the Convention required.<sup>[624]</sup> Similar wording appears in the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour<sup>[625]</sup> and the African Charter on the Rights and Welfare of the Child.<sup>[626]</sup>

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **1.1 Prevention**

Children have the right to receive accurate and objective information about drugs and drug-related harm, the right to protection from harmful misinformation, and the right to privacy.

##### **In accordance with this right, States should:**

- i. Undertake evidence-based and human rights-compliant prevention measures, including in schools.
- ii. Avoid excluding children from school due to risk-taking behaviours and take measures to ensure their access to education.
- iii. Avoid random drug testing, sniffer dogs, and strip searches in schools.

##### **Commentary**

The Committee on the Rights of the Child has repeatedly called on States to put in place effective drug prevention measures pursuant to the Convention on the Rights of the Child, including in schools.

[627] Scare tactics and misinformation are counterproductive and should not be employed, [628] which is why the Committee consistently calls for ‘accurate and objective’ information. [629] The UN General Assembly Special Session 2016 Outcome Document also requests that States take practical prevention measures for children and youth by providing ‘accurate information’. [630] The UN Office on Drugs and Crime has developed international prevention standards that incorporate key ethical considerations and a review of the evidence. [631] These have been endorsed by the Commission on Narcotic Drugs. [632]

Random school drug testing is ineffective and is therefore an unwarranted infringement of children’s right to privacy under the Convention on the Rights of the Child. [633] The UN Office on Drugs and Crime’s prevention standards recommend avoiding such testing. [634] Given the absence of evidence of effectiveness of the use of sniffer dogs, this too should be avoided on the same rights-based grounds. Strip searches, meanwhile, have been found to be an unconstitutional violation of the right to privacy in some jurisdictions. [635]

Children have the right to education under the Convention on the Rights of the Child. [636] Retention in school is an important form of protection from a range of health harms, while exclusion from school has been identified as a risk factor for the initiation or escalation of drug use.

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **1.2 Interventions for children who use drugs**

Children have the rights to health, to be heard in matters related to their own health care, and to decisions based on clinical need in the best interests of the child, including decisions related to interventions for children who use drugs.

**In accordance with these rights, States should:**

- i. Develop accessible, child-sensitive prevention, drug dependence treatment, and harm reduction services.
- ii. Ensure that decisions regarding access to drug-related health services are taken in the best interests of the child, with due regard to their evolving capacities.
- iii. Remove legal age restrictions on existing drug-related health services.
- iv. Ensure that young people who use drugs have access to drug-related health information, and counselling without parental or guardian consent, and that treatment or harm reduction service provision without parental or guardian consent is possible when in the best interests of the individual.

**Where these interventions concern drug-related criminality, States should:**

- v. Target efforts primarily at diversion from the criminal justice system and promote rehabilitation over punishment.
- vi. Refrain from criminalising children because of their drug use or possession of drugs for personal use.
- vii. Adhere to international juvenile justice standards in all efforts to address and respond to drug-related criminality among children and young people.

#### **Commentary**

The Committee on the Rights of the Child has repeatedly called for ‘child-sensitive’ and ‘youth friendly’ drug treatment and harm reduction services.<sup>[637]</sup> It has consistently recommended that States Parties put in place and adequately fund such services for this age group<sup>[638]</sup> and has condemned the practice of placing children in compulsory drug detention and rehabilitation centres.<sup>[639]</sup> The Working Group on Arbitrary Detention has also recommended that drug treatment and harm reduction services be made available to children on a voluntary basis, without oversight or mandate by the judiciary, and with health care services provided by health professionals.<sup>[640]</sup> Treatment and harm reduction services should be of sufficient quality and acceptable for the needs of this age group, based on the dynamics of drug use among them. Similarly, the UN General Assembly Special Session 2016 Outcome Document promotes ‘non-discriminatory access to a broad range of interventions ... giving special attention to the specific needs of ... children and youth’.<sup>[641]</sup>

To facilitate access to services for those in need, legal age restrictions on existing services should be removed<sup>[642]</sup> and parental consent conditions should be amended.<sup>[643]</sup> Legal age restrictions inhibit the ability to conduct best interests assessments<sup>[644]</sup> based on clinical need<sup>[645]</sup> and in consultation with the young person.<sup>[646]</sup> While parental consent or support for access to services and health information may be desirable, it should not be a compulsory condition of access. The Committee on the Rights of the Child has been consistent on this matter with regard to adolescent health and sexual and reproductive services.<sup>[647]</sup> Alternative methods for determining children’s access to services, rooted in the best interests of the child, have been developed through case law on sexual and reproductive health services.<sup>[648]</sup> In some countries, these methods have already been adapted to drug-related services.<sup>[649]</sup>

A range of children’s rights treaties and provisions apply in the context of drug-related criminality. The UN General Assembly Special Session 2016 Outcome Document recognises the importance of ensuring that ‘the specific needs, including mental and physical needs, of underage drug offenders and children affected by drug-related crime are appropriately considered, including in criminal justice proceedings where required, including by providing those in need with drug treatment and related support services’.<sup>[650]</sup> In addition, international juvenile justice standards are set out in the Convention on the Rights of the Child,<sup>[651]</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (also known as the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Guidelines for Action on Children in the Criminal Justice System.<sup>[652]</sup> These all emphasise the need for a focus on drug use prevention and drug treatment for those involved in the juvenile justice system.<sup>[653]</sup> Beyond such provisions, however, juvenile justice standards apply in their entirety to children involved in drug-related criminality. For example, the minimum age of criminal responsibility should be suitably high, and dual ages of criminal responsibility applying a lower age for drug offences should be avoided. Moreover, the detention of children should be avoided wherever possible.<sup>[654]</sup>

Children should not be criminalised for their drug use. The Committee on the Rights of the Child has been consistent on this matter due to criminalisation’s counterproductive effects and has recommended the repeal of laws criminalising drug use among children.<sup>[655]</sup> A high court in South Africa has held that the criminalisation of the possession of cannabis for personal use, where the same conduct was not criminalised for adults, violates children’s rights to equality and – given the profound negative impact of exposure to the criminal justice system – the right to have their best interests taken into account.<sup>[656]</sup>

### III. Obligations Arising from the Human Rights of Particular Groups:

#### 1.3 Protection in the context of parental drug dependence

Every child has the right to such care and protection as is necessary for their well-being, including where the child's parents use drugs or are drug dependent.

**In accordance with this right, States shall:**

i. Ensure that the best interests of the child are a primary consideration in decisions regarding their care, including in the context of parental drug dependence.

**In addition, States should:**

ii. Ensure that a parent's drug use or dependency is never the sole justification for removing a child from parental care or for preventing reunification. Efforts should be directed primarily towards enabling the child to remain in or return to the care of their parents, including by assisting drug-dependent parents in carrying out their child care responsibilities.

#### Commentary

The Convention on the Rights of the Child reaffirms the special role of the family for the optimal development of the child<sup>[657]</sup> and provides that children have the right to know and be cared for by their parents.<sup>[658]</sup> The Convention includes the obligation to assist parents in carrying out their child care responsibilities when needed.<sup>[659]</sup> As stated in the UN Guidelines for the Alternative Care of Children, 'efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents ...'.<sup>[660]</sup> The Guidelines further state that 'States should seek to ensure appropriate and culturally sensitive measures ... [t]o support family caregiving environments whose capacities are limited by factors such as ... drug and alcohol misuse ...'.<sup>[661]</sup> Where a child is removed, temporarily or otherwise, the State has an obligation to provide alternative care that is in line with the child's best interests.<sup>[662]</sup>

Removal from parental custody is an extreme step and must not be done 'except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child'.<sup>[663]</sup> Such determination may be necessary 'in a particular case such as one involving abuse or neglect of the child ...'.<sup>[664]</sup> Parental drug use or dependence should not be equated with neglect or abuse. In some countries, however, a parent's inclusion in a drug user registry is sufficient to challenge that person's custody rights without the need for evidence of actual neglect or abuse.

### III. Obligations Arising from the Human Rights of Particular Groups:

#### 1.4 Protection from exploitation in the illicit drug trade

Children have the right to protection from exploitation, including in the illicit drug trade. States shall take appropriate measures to protect children from exploitation in the illicit drug trade through preventative and remedial measures.

**In accordance with this right, States should:**

i. Prioritise addressing the root causes of involvement in the drug trade, including poverty and social marginalisation.



ii. Clearly define exploitation, ensuring that children's participation in the rural cultivation of illicit drug crops through tradition or poverty is not wrongly treated as exploitation without specific evidence of such exploitation taking place.

iii. Avoid treating as criminals children who have been exploited in the drug trade.

## Commentary

The protection of children from exploitation in the drug trade is addressed in the Convention on the Rights of the Child and in the International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.<sup>[665]</sup> It is also addressed in the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>[666]</sup> as well as in the UN General Assembly Special Session 2016 Outcome Document.

<sup>[667]</sup> Every UN Member State has treaty obligations relating to this issue, as the one State that has not ratified the Convention on the Rights of the Child has ratified the ILO Convention and the drug control convention. It should be noted, however, that because children's involvement in the drug trade remains poorly researched and understood, there is less human rights guidance on this aspect of the protection of children from drugs. It is an area in need of considerable development.

The ILO Convention is clear on the need to impose penalties on those who exploit children, an idea that is supported by the Convention on the Rights of the Child. However, while there are many children who are exploited in the drug trade, not all forms of child involvement can or should be so categorised. States should agree on an appropriate definition of exploitation that clearly identifies vulnerable children and those who exploit them. Parents and other family members should not automatically be seen as criminals or punished for their children's involvement in the rural cultivation of illicit drug crops. Additionally, children who are exploited in the drug trade or involved through poverty or tradition should not be treated as criminals.

The ILO Convention deals with preventative and development policy interventions to reduce children's involvement in the worst forms of child labour.<sup>[668]</sup> The Convention's provisions focus on root causes and reintegration. Whether children are involved in rural drug production through poverty, tradition, or their role on family land, or are involved in the drug trade due to their own drug dependence or homelessness, the protection of children from involvement in the illicit drug trade should be read alongside these provisions.

### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances refers to the protection of children as an aim of the treaty.<sup>[669]</sup> It stresses that offences involving the exploitation or 'victimization' of children are to be treated as 'particularly serious'. Such provisions lend themselves to harmonious interpretation with associated concomitant obligations on the rights of the child.<sup>[670]</sup>

## III. Obligations Arising from the Human Rights of Particular Groups: 2. Women

Women have the right to enjoy human rights and fundamental freedoms on a non-discriminatory basis in all fields of life on the basis of equality with men. This right applies to women who use drugs and women who are involved in the drug trade or dependent on illicit drug economies.

**In accordance with these rights, States shall:**

i. Take all appropriate measures, including legislative, administrative, social, and educational measures, to prevent, mitigate, and remediate any disproportionate or otherwise discriminatory impact on women as a result of drug laws, policies, and practices, particularly where aggravated effects result from intersecting forms of discrimination.

**To facilitate the above, States should:**

ii. Obtain and disseminate age- and sex-disaggregated data on drug use and related harms and on the nature of women's involvement in the illicit drug trade, including involvement in the criminal justice system as a result of allegedly using drugs or being involved in drug-related crime.

**Commentary**

International human rights law establishes a State obligation to take all necessary steps to give effect to the rights enshrined in treaties on a non-discriminatory basis, in addition to women's rights to non-discrimination and equality as specifically set out in international and regional instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified by 189 States.<sup>[671]</sup> For example, the obligation to ensure women's right to health requires removing legal and other obstacles that prevent women from accessing and benefiting from health care on a basis of equality with men, including by addressing traditional, historical, religious, and cultural attitudes that affect access to determinants of health and health goods and services.<sup>[672]</sup>

International human rights law also requires States to adopt and pursue policies to address intersecting forms of discrimination and their compounded negative impacts.<sup>[673]</sup> Several UN treaty bodies have acknowledged the existence of intersecting discrimination as distinct discrimination resulting from multiple, intersecting factors of disadvantage.<sup>[674]</sup> For example, women may experience additional discrimination due to the intersection of sex with other factors, such as age, race, ethnicity, religion, economic status, sexual orientation or gender identity, engagement in sex work, and health status, including living with HIV.<sup>[675]</sup> These factors combine to produce distinct forms of discrimination, such as the denial of reproductive health services to women based on race and poverty.<sup>[676]</sup> Intersecting discrimination may also express itself as the stereotyping of subgroups of women, such as the categorisation of women who use drugs as immoral, sexually promiscuous, and unfit to be mothers, caregivers, or partners.

Women who use drugs, who are involved in the drug trade, or who are dependent on illicit drug economies face distinct forms of discriminatory treatment. The Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have recognised that women who use drugs face intersecting forms of gender-based discrimination, including in health care, and recommend that States adopt measures to address such multiple forms of discrimination.<sup>[677]</sup> Furthermore, the Committee on the Elimination of Discrimination against Women has expressed concern about the lack of data on women who use drugs and women in need of drug dependence treatment, including in prison, and recommends that States collect such information to determine the extent of the problem and develop appropriate interventions.<sup>[678]</sup>

The UN Working Group on the Issue of Discrimination against Women in Law and in Practice has emphasised that

States must urgently take concrete measures to meet their commitments to ensuring women's rights in drug policies and programmes. This cannot happen if issues and concerns that are specific to women remain invisible and neglected. In keeping with the Sustainable Development Goals, in which gender equality is a stand-alone goal as well

as being incorporated in all other goals and targets, tackling the impact of drug policies on women deserves proper attention and visibility. Drug policies cannot be effective without addressing the root causes of structural inequality and discrimination, which place women in a subordinate role in society, including in the family, often leading to experiences of violence, marginalisation and domination. Marginalisation of women, poverty, gender-based violence, lack of job opportunities and absence of social protection from the State, together with the need to support their family, can drive women into committing drug-related offences.<sup>[679]</sup>

### III. Obligations Arising from the Human Rights of Particular Groups:

#### 2.1 Interventions for women who use drugs

Women who use drugs have the right to access health care, including sexual and reproductive care, on a non-discriminatory basis.

**In accordance with this right, States should:**

- i. Take all necessary legislative, administrative, and policy measures to ensure the availability of and non-discriminatory access to good-quality gender-sensitive prevention, treatment, harm reduction, and other health care services for women who use drugs, including opioid substitution treatment for pregnant women, tailored to meet women's specific needs.
- ii. Ensure that these services take into account the needs of lone or primary caretakers of children and other family members.
- iii. Ensure that a woman's drug use or dependency is never the sole justification for removing a child from her care or preventing reunification with her child, as this may deter access to necessary drug-related health care services and prejudice the woman's right to family life and the child's right to remain in the care and custody of their parents.
- iv. Take immediate steps to end the detention and punishment of women as a result of their drug use during pregnancy.
- v. End any practice amounting to involuntary sterilisation or abortion on grounds of drug use.
- vi. Take all necessary legislative, administrative, and policy measures to ensure that voluntary, informed consent is a precondition for any medical treatment or diagnostic intervention for women and that drug use or dependence alone are not grounds for detention or to deprive a woman of the right to withhold consent.
- vii. Take all necessary legislative, administrative, and policy measures to prevent and redress violence against women who use drugs and to provide care for such women.

**In addition, States may:**

- viii. Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption as an important step towards fulfilling women's right to health.

#### **Commentary**

The right to health establishes an obligation to respect, protect, and fulfil the right to sexual and reproductive health without discrimination. The Committee on the Elimination of Discrimination

against Women has emphasised that this right also applies to women who use drugs, necessitating the provision of accessible, gender-sensitive drug treatment and harm reduction services in addition to other appropriate services related to sexual and reproductive health.<sup>[680]</sup> States' maximum available resources should be committed towards ensuring universal access to appropriate, accessible, acceptable, and quality (that is, non-stigmatising and non-discriminatory) sexual and reproductive health care goods, services, and information and education, including for pregnant women who use drugs.<sup>[681]</sup> Laws, policies, and practices that impede or deny women access to essential prenatal, intrapartum, or postnatal care on any grounds violate the right to health.<sup>[682]</sup>

In some contexts, women who inject drugs are almost twice as likely as their male counterparts to be living with HIV.<sup>[683]</sup> The Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights have raised concerns about the ongoing lack of access to gender-sensitive health and harm reduction services and evidence-based drug treatment for women tailored to their specific needs, as well as the significant legislative barriers that women face in access to supervised consumption services.<sup>[684]</sup> They have called for the provision of these services in the community and in custodial settings, as well as the removal of barriers and allocation of adequate resources to them.<sup>[685]</sup>

The Committee against Torture has raised concern about the detention of women who use drugs in manual 'labour treatment facilities', where people are detained without access to a lawyer or appropriate medical care, and has highlighted the situation of women detainees' lack of access to medical care, including gynaecologists.<sup>[686]</sup>

The Committee on the Elimination of Discrimination against Women has called for the establishment of a transparent process permitting the operation of supervised consumption services without risk of prosecution of clients or service providers and for measures to prevent overdose deaths, including by exempting from arrest drug users who contact emergency services for assistance when facing an overdose.<sup>[687]</sup> The Committee has also called on States to take measures to prevent and combat the use of drugs and of alcohol and to allocate sufficient resources in this regard.<sup>[688]</sup>

The Committee on Economic, Social and Cultural Rights has raised concern about the serious health risks created by the police harassment of drug users, particularly women, that forces them to undergo drug testing in the street or involuntary testing through urinary catheters. The Committee has called for an end to such forced testing practices, the investigation of such cases of abuse and harassment, and the punishment of those responsible.<sup>[689]</sup>

The Special Rapporteur on violence against women has raised concern that laws criminalising the purchase of sexual services increase the vulnerability to violence and acquisition of sexually transmitted diseases for sex workers who use drugs and work on the street. The Special Rapporteur has recommended that all women who conduct sex work be offered special protection and support; that programmes for women sex workers with 'substance-abuse' problems be maintained and expanded; and that these women be provided immediate access to drug dependence treatment programmes, if they choose.<sup>[690]</sup> The Special Rapporteur has also raised concern about the denial of access to shelters for women dependent on drugs who face violence and has recommended that women's shelters be adequately funded, with particular attention paid to women with special needs, including women with substance-abuse problems.<sup>[691]</sup>

The UN Office on Drugs and Crime and the World Health Organization have developed standards to address the specific needs of women who use drugs, including pregnant women, that incorporate key ethical considerations and a review of the evidence.<sup>[692]</sup> The Commission on Narcotic Drugs has

encouraged UN Member States to provide services for women who use drugs in line with those standards<sup>[693]</sup> and to mainstream a 'gender perspective' in the design and implementation of drug policies and programmes that takes into account the specific needs of women.<sup>[694]</sup> The UN General Assembly Special Session 2016 Outcome Document calls on States to ensure that women, including those in detention, have access to adequate health services and counselling, including in particular those needed during pregnancy, and to develop and disseminate 'gender-sensitive' measures that 'take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem', referring also to the Bangkok Rules.<sup>[695]</sup>

In some jurisdictions, pregnant women who use or are suspected of using illicit drugs face criminal punishment or civil sanctions (including incarceration and civil confinement), the termination of parental rights, or charges of child abuse or neglect.<sup>[696]</sup> The Committee on Economic, Social and Cultural Rights has raised concern that women with children have unlawfully been forced to end opioid substitution therapy under threat of termination of parental rights and has recommended that such cases be investigated and those responsible be punished.<sup>[697]</sup> Pregnant women suspected of drug use are also sometimes involuntarily detained and forced to undergo medical treatment, in violation of their rights to health, equality and non-discrimination, and freedom from arbitrary detention.<sup>[698]</sup> The UN Working Group on Arbitrary Detention has criticised the involuntary detention of pregnant women who use drugs as a violation of due process, discriminatory in its reach and application, and a deterrent to seeking health care.<sup>[699]</sup> The UN Working Group on Discrimination against Women in Law and Practice considers such custodial and punitive measures for drug consumption during pregnancy to be discriminatory and an impediment to women's right to health.<sup>[700]</sup> The Special Rapporteur on the right to health has also found that the criminalisation of illicit drug use and other conduct during pregnancy infringes the right to health of pregnant women by deterring them from seeking health care and pregnancy-related information, and therefore calls on States to abolish the application of criminal laws to such conduct.<sup>[701]</sup>

In some jurisdictions, laws, policies, and practices indicate drug use as a criterion for the loss of child custody or for forced sterilisation or abortion on the discriminatory basis that women who use drugs are necessarily unfit to bear or care for children.<sup>[702]</sup> This is part of a broader recognised global human rights problem concerning the involuntary sterilisation of women from marginalised communities<sup>[703]</sup> and poses unique disincentives for women who use drugs to access health services.<sup>[704]</sup> International and regional human rights bodies have found involuntary, coercive, and forced medical interventions (including forced or coerced sterilisation and abortion) to be a form of violence and discrimination against women,<sup>[705]</sup> violating not only the right to freedom from discrimination<sup>[706]</sup> but also the right to sexual and reproductive health,<sup>[707]</sup> the right to decide freely and responsibly on the number and spacing of one's children,<sup>[708]</sup> the right to found a family,<sup>[709]</sup> the right to privacy,<sup>[710]</sup> and the right to freedom from torture and other cruel, inhuman, or degrading treatment.<sup>[711]</sup> States have an obligation to take effective steps to prohibit, prevent, and redress forced or coerced sterilisation and abortion, including where performed by private individuals and entities.<sup>[712]</sup> The Supreme Court of Namibia has also held that the sterilisation of women living with HIV in circumstances where defendants failed to prove that they had adequately informed the women of the nature, risks, and consequences of sterilisation or that the women had made clear, knowledgeable decisions to consent to the procedure violated informed consent required by law.<sup>[713]</sup> The European Court of Human Rights has held that the termination of parental rights of a woman in drug treatment whose children were neither neglected nor in danger violated her right to respect for her private and family life.<sup>[714]</sup>

The Committee on the Elimination of Discrimination against Women has also raised concern about the relationship between drug use and gender-based violence and has called on States to collect data on the possible correlation between the two<sup>[715]</sup> and to ensure that prevention, protection, and care strategies reach women at higher risk of violence because of their drug use or dependence, including by adopting legislative measures and targeted policies necessary to address such violence.<sup>[716]</sup> The Committee's general recommendation on violence against women provides appropriate guidance on gender-based violence that includes specific recommendations for measures to address such violence against women who face multiple, intersecting forms of discrimination.<sup>[717]</sup>

The Committee on the Elimination of Discrimination against Women has recognised the important role that civil society organisations play in providing treatment and support services to women who use drugs and has recommended that adequate funding be provided to organisations carrying out this work.<sup>[718]</sup>

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **2.2 Women, drug-related offences, and dependence on illicit drug economies**

Women have the equal right to an adequate standard of living, including the right to food, clothing, and housing. This applies to women involved in the drug trade and dependent on illicit drug economies.

##### **In accordance with this right, States should:**

- i. Develop specific, viable, and sustainable economic alternatives for women who are particularly at risk of exploitation in the illicit drug economy, including women who use drugs, poor women (whether urban or rural), and women from indigenous and ethnic minority communities.
- ii. Take all necessary legislative, administrative, and policy measures to ensure that women's specific needs and circumstances are taken into account in efforts to address involvement in the drug trade and dependence on illicit drug economies.
- iii. Adhere to international standards in all efforts to address and respond to drug-related criminality among women.
- iv. Make available gender-specific interventions that aim primarily at diversion from the criminal justice system, and address the underlying factors leading to women coming into contact with the criminal justice system.

##### **With regard to sentencing for drug-related offences, States should:**

- v. Legislate for and prioritise non-custodial sentences for pregnant women where possible and appropriate.
- vi. Ensure that courts have the power to consider mitigating factors in light of women's caretaking responsibilities, such as lack of criminal history and relative non-severity and nature of the criminal conduct.
- vii. Ensure the earliest possible transfer of non-resident foreign-national women prisoners, following the request or informed consent of the woman concerned.



## Commentary

The Committee on the Elimination of Discrimination against Women has expressed concern about the significant increase in the already substantial number of women and girls imprisoned for drug-related offences<sup>[719]</sup> and in preventive detention on drug-related charges,<sup>[720]</sup> as well as the limited access to gender-specific health care for these individuals.<sup>[721]</sup> The Committee has recommended that States enhance economic opportunities for women at risk of involvement in drug trafficking and take measures to reduce the number of women in conflict with the law for drug-related reasons, including through programmes addressing the causes of criminality.<sup>[722]</sup> It has also recommended that prison reform consider a gender perspective; that greater use of non-custodial sanctions and measures be made; that judicial procedures avoid the overuse of preventive measures; and that adequate health care facilities be provided for women in detention centres.<sup>[723]</sup>

The Committee on Economic, Social and Cultural Rights has raised concern that predominantly punitive approaches to drug abuse affect women in particular and have 'contributed to the disproportionate increase in the size of the population deprived of liberty in overcrowded prisons and in poor conditions'.<sup>[724]</sup>

The Committee against Torture has likewise raised concern about the impact of drug control legislation on the size of the female prison population.<sup>[725]</sup> Indeed, the Special Rapporteur on violence against women has raised concern that 'domestic and international anti-drug policies are a leading cause of rising rates of incarceration of women around the world',<sup>[726]</sup> observing that women in some jurisdictions are over-represented among low-level, non-violent drug offenders; often have minimal or no previous criminal history; and are generally not principal figures in criminal organisations or activities. Despite this, they have received similar sentences as 'high level' drug offenders,<sup>[727]</sup> or in some cases, serve prison time while more serious offenders enter into plea bargains and avoid imprisonment.<sup>[728]</sup> The Special Rapporteur has also found that incarceration rates among ethnic minority women are much higher than those among other women.<sup>[729]</sup> The Special Rapporteur on minority issues has highlighted the large increase in the number of women incarcerated for drug-related crimes, noting in particular the impact on women of African descent, who are highly over-represented in prison populations.<sup>[730]</sup>

The Special Rapporteur on violence against women has called on States to ensure that sentencing policies reflect an understanding of women's levels of culpability and control with respect to drug offences and to review laws holding women responsible for association with people involved in drug activities, even where they have little or no knowledge of these activities. The Special Rapporteur has also recommended that gender-sensitive drug treatment programmes be provided in women's prisons.<sup>[731]</sup> The UN Working Group on Arbitrary Detention has raised concern that poor and otherwise marginalised women, particularly mothers and housewives, often bear the brunt of harsh anti-drug legislation, facing incarceration for minor drug crimes while those responsible for more serious offences, if caught, can use their financial resources to evade punishment<sup>[732]</sup> and that women's lack of access to legal representation and negative stereotypes about women charged with drug-related offenses may limit opportunities to seek plea bargains or reduced sentences.<sup>[733]</sup> The Working Group also has raised concern that some women incarcerated for drug-related offences have been coerced into drug-related activities by husbands or partners, or for drugs in their home that belong to their partners, and that pregnant woman convicted of drug-related offences cannot benefit from the alternatives to incarceration available to those convicted of other crimes.<sup>[734]</sup>

The UN Working Group on the Issue of Discrimination against Women in Law and in Practice has raised concern about the drastic rise in the number of women in prison globally and has noted that in some parts of the world, this increase can be attributed mainly to women being convicted of drug-related offences.<sup>[735]</sup> The Working Group has observed that proportionally, women are more likely than men to be incarcerated for drug-related crimes and that while they tend to be engaged at lower levels of the drug trade, they may receive harsher sentences than those responsible for more serious offences.<sup>[736]</sup> This disparity is due to the fact that they may have fewer opportunities to negotiate for lesser punishments, given their low status within criminal drug networks and because in some jurisdictions, the work that women do, such as transporting drugs, is subject to harsher punishment than offences committed by people at higher levels of these networks.<sup>[737]</sup> The Working Group also has raised concern about the disproportionate criminalisation of indigenous and racial minority women among the lower levels of drug networks.<sup>[738]</sup>

The Working Group on the Issue of Discrimination against Women in Law and in Practice has highlighted that violence is often used as a tool to coerce women to become drug couriers.<sup>[739]</sup> Women who are engaged in the drug trade or who use drugs may be reluctant to report such violence to law enforcement, for fear that doing so will subject them to further violence or discrimination.<sup>[740]</sup>

The Committee on the Elimination of Discrimination against Women recommends that States enhance economic opportunities for women at risk of involvement in drug trafficking and take measures to reduce the number of women in conflict with the law for drug-related reasons, including through programmes addressing the causes of criminality.<sup>[741]</sup> The UN General Assembly Special Session 2016 Outcome Document likewise recommends that States identify and address the conditions that make women vulnerable to exploitation and participation in drug trafficking, including as couriers.<sup>[742]</sup> Several countries have already enacted legislative and policy reforms to address the harmful consequences of drug control efforts on women, taking into account their age, economic status, caretaking responsibility, and pregnancy,<sup>[743]</sup> as well as the specific circumstances of poor, foreign women imprisoned as drug couriers.<sup>[744]</sup>

The Committee on the Elimination of Discrimination against Women and the Special Rapporteur on violence against women have called on States to develop gender-specific alternatives to incarceration, in line with the Bangkok Rules.<sup>[745]</sup> These rules encourage alternative measures and sanctions that take into account the accused's history, the circumstances of the offence, and her care responsibilities, and they recommend the use of alternatives to incarceration for non-violent offences and the adoption of gender-specific measures to address the needs of women who use drugs.<sup>[746]</sup> They also recommend the earliest possible transfer of non-resident foreign-national women prisoners to their home country with their consent, especially if the women have children there, taking advantage of relevant bilateral or multilateral agreements.<sup>[747]</sup> The Mandela Rules provide further guidance on the treatment of women prisoners.<sup>[748]</sup>

The Commission on Narcotic Drugs has also encouraged UN Member States to take into account the specific needs and circumstances of women subject to arrest, detention, prosecution, and sentencing for drug-related offences when developing crime prevention and criminal justice measures, drawing on, as appropriate, the Bangkok Rules, the Mandela Rules, and the Tokyo Rules.<sup>[749]</sup> The UN General Assembly Special Session 2016 Outcome Document likewise encourages consideration of the specific needs and circumstances of women in prison for drug offences, in line with the Bangkok Rules and also referring to the Mandela Rules and Tokyo Rules.<sup>[750]</sup>

### III. Obligations Arising from the Human Rights of Particular Groups:

## 2.3 Women and illicit drug cultivation

Women have the right to participate in and benefit from, on an equal basis with men, efforts to provide alternative livelihoods, including in rural communities dependent on illicit drug crops.

**In accordance with this right, States should:**

- i. Take necessary legislative and policy measures to ensure women's equal right to participate in and benefit from efforts to provide alternative livelihoods in rural communities dependent on illicit drug crops. Such measures may include adopting, amending, repealing, or modifying laws, policies, and practices to ensure women's rights, on an equal basis with men, to agrarian reforms, to ownership, possession, and control of land, and to water and other natural resources, as well as their access to financial services, credits, loans, markets, and marketing facilities, irrespective of their civil or marital status.
- ii. Take measures to ensure that women in rural areas are meaningfully involved in decision making and benefit from programmes and credit facilities on an equal basis with men.

#### Commentary

Under the Convention on the Elimination of All Forms of Discrimination against Women, States have a positive obligation to take account of the problems faced by rural women and the significant roles that women play in their families' economic survival. They are also obligated to take action to ensure women's right to equal treatment in land and agrarian reforms and resettlement schemes; their equal right to access agricultural credit, loans, markets, and marketing facilities; and their equal right to enjoy adequate living conditions, particularly with regard to housing, sanitation, water supply, electricity, transport, and communications.<sup>[751]</sup> Yet as the Committee on the Elimination of Discrimination against Women has noted, women living in rural areas often face discrimination in these matters, with limited rights over land and natural resources.<sup>[752]</sup>

The Committee has pointed out that the implementation of illicit crop eradication programmes, including the banning of opium cultivation, without putting in place sustainable alternatives, has caused large-scale food shortages and migration.<sup>[753]</sup> Furthermore, in many places, drug crop substitution programmes mainly benefit men, who are traditional land titleholders and often the sole beneficiaries of agricultural extension services, training, credit, and tools.<sup>[754]</sup> These programmes further inscribe gender inequality in crop cultivation areas where women can access legal land titles only through husbands or male relatives.<sup>[755]</sup> The Committee has highlighted how laws giving preference to male heirs over female heirs, and practices that authorise only heads of household to sign official documentation such as land ownership certificates, or to receive parcels of land from the government, perpetuate discrimination against women and negatively affect their access to land. In other instances, women may not benefit from grants aimed at supporting self-employment because they hand these funds over to husbands or male relatives.<sup>[756]</sup>

The Committee recommends that States develop sustainable alternative livelihoods for women while continuing to eradicate illicit drug crops.<sup>[757]</sup> These actions should arise from 'a comprehensive development plan for rural areas with the full involvement of rural women in its elaboration and implementation and backed by sufficient budgetary resources with the aim of fighting against poverty and promoting new economic opportunities that will replace the cultivation of opium'.<sup>[758]</sup> Such plans should also include 'measures to ensure that rural women are the effective decision

makers and beneficiaries of programmes and credit facilities<sup>[759]</sup> and 'efforts to address the needs of rural women and provide them with better access to health, education, clean water and sanitation services, fertile land and income-generating projects'.<sup>[760]</sup> The Committee further calls for the abolition of gender stereotypes in administrative law and practice, and for the legal recognition of women's rights to own and inherit land.<sup>[761]</sup> Similarly, the UN General Assembly Special Session 2016 Outcome Document encourages States to develop viable economic alternatives in urban and rural areas affected by the illicit drug trade, ensuring that 'both men and women benefit equally from them, including through job opportunities, improved infrastructure and basic public services and, as appropriate, access and legal titles to land'.<sup>[762]</sup>

Technical guidance from the UN Office on Drugs and Crime points out that addressing the unequal division of labour, access to benefits, participation in decision making, and access to and control over resources (such as land, labour, and technology) between men and women – including the gender norms and cultural expectations that influence these factors – is key to mainstreaming gender in alternative development programmes.<sup>[763]</sup> In practice, however, States' implementation of this technical guidance has not always been adequate.<sup>[764]</sup>

### III. Obligations Arising from the Human Rights of Particular Groups: 3. Persons deprived of liberty

All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the person. This includes those held in prisons and other closed settings and places of detention for drug-related reasons. Such persons have the right to a standard of health care equivalent to that available to the general population.

**In accordance with these rights, States should:**

- i. Adhere at all times to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
- ii. Adhere at all times to international standards relating to specific groups deprived of their liberty, including women (the Bangkok Rules) and children (the Beijing Rules).
- iii. Ensure that all persons deprived of their liberty have access to voluntary and evidence-based health services, including harm reduction and drug treatment services, as well as essential medicines, including HIV and hepatitis C services, at a standard that is equivalent to that in the community.
- iv. Organise such drug-related and other health care services in close parallel with general public health administration, taking into account the specific nature of individuals' detention, and design services to ensure the continuity of harm reduction, drug treatment, and access to essential medicines through transitions of entering and exiting the detention facility, as well as transfer between institutions.
- v. Ensure that drug-related and other health care services for these populations are provided by qualified medical personnel able to make independent, evidence-based decisions for their patients.
- vi. Ensure the provision of training for health care professionals and other staff working in prisons and other closed settings and places of detention on drug treatment, harm reduction, and palliative care and pain management, as well as other medical conditions that require the use of controlled substances for medical purposes.

## Commentary

The act of depriving a person of liberty imposes specific and enhanced obligations on States. Both the right to life and the prohibition of torture and other forms of cruel, inhuman, or degrading treatment or punishment create obligations to refrain from inflicting harm on a detainee.<sup>[765]</sup> At the same time, States have 'positive obligations' to do everything reasonably possible to safeguard the lives and well-being of those being detained.<sup>[766]</sup>

The International Covenant on Civil and Political Rights imposes further positive obligations on the State to ensure minimum standards of treatment consistent with the humanity and inherent dignity of the person.<sup>[767]</sup> In the context of drug control, persons in pre-trial detention or imprisoned after conviction for drug-related offences should not be subjected to harsher treatment than other persons in detention or in places of imprisonment. This has particular relevance for the deprivation of liberty on the basis of drug offences and for the detention or imprisonment of persons who use drugs (regardless of their criminal charge or conviction), as well as for standards of health care available to such persons.

States have legal obligations to ensure that people deprived of their liberty have adequate access to good-quality health facilities, goods, services, and information equivalent to those available in the general community, which are necessary to meet State obligations under the right to health<sup>[768]</sup> and the prohibition on torture and ill-treatment.<sup>[769]</sup> This includes the obligation to provide access to voluntary, evidence-based drug treatment and harm reduction services,<sup>[770]</sup> including needle and syringe programmes and opioid substitution therapies,<sup>[771]</sup> and to provide people deprived of liberty naloxone during their detention and upon their release.<sup>[772]</sup> Guidance by the UN Office on Drugs and Crime, World Health Organization, United Nations Development Programme, Joint United Nations Programme on HIV/AIDS, International Labour Organization, and UN Population Fund also recommends that that naloxone be made available to people in prison, prison staff, and other people in prisons and other closed settings who might witness an opioid overdose and provided to people upon release from prison to prevent post-release overdose deaths.<sup>[773]</sup>

A number of UN human rights treaty bodies have raised concerns that the excessive use of incarceration and pre-trial detention as a drug control measure and disproportionate punishments for drug use and minor drug-related crimes have resulted in serious prison overcrowding, calling into question States' compliance with their obligations to prevent torture and ill-treatment and to protect the right to health.<sup>[774]</sup> They urge States to consider the greater use of non-custodial measures in line with the Tokyo Rules<sup>[775]</sup> and recommend that States reconsider their penalisation of drug use as part of a health- and rights-based approach to drug use.<sup>[776]</sup> The UN Working Group on Arbitrary Detention has found that over-incarceration for drug-related offences contributes significantly to prison overcrowding, which can call into question a State's compliance with guarantees that everyone in detention shall be treated with humanity and respect for their dignity.<sup>[777]</sup>

The Special Rapporteur on the right to health has recommended that States take measures to protect against the spread of COVID-19 in prisons and other detention centres, including by considering the early release of prisoners with drug dependence and other health vulnerabilities (such as HIV, hepatitis C, and tuberculosis) and those charged with minor and non-drug-related crimes, and to adequately plan for the health care of those released.<sup>[778]</sup> The Special Rapporteur has recommended that in the context of the COVID-19 emergency, wherever compulsory drug treatment centres operate, States 'should take immediate measures to close such centres, release people detained in such centres, and replace such facilities with voluntary, evidence-based care and

support in the community'.<sup>[779]</sup> The Special Rapporteur has further recommended that adequately funded, effective measures be put in place to ensure that those released from prisons and other detention settings have continuity of care, as well as access to adequate housing and health care in the community. Thirteen UN entities, recalling the 2012 joint statement on compulsory drug detention centres, have likewise called on States operating compulsory drug detention centres to close them permanently without delay and to implement voluntary, evidence- and rights-based health and social services in the community as part of efforts to curb the spread of COVID-19.<sup>[780]</sup>

The UN General Assembly Special Session 2016 Outcome Document promotes the provision of drug treatment and harm reduction services both in the community and in prisons, with a special emphasis on imprisoned women who use drugs.<sup>[781]</sup> Such services must include 'gender-sensitive and evidence-based drug treatment services to reduce harmful effects for women who use drugs, including harm reduction programmes for women in detention'.<sup>[782]</sup> The denial, removal, or discontinuation of effective drug treatment and harm reduction services in prisons and other places of detention violates the right to health and may in some circumstances contribute to conditions that meet the threshold of cruel, inhuman, or degrading treatment or punishment.<sup>[783]</sup>

Technical guidance from the World Health Organization and UN Office on Drugs and Crime recommends that health personnel in prison have complete professional independence from prison authorities and preferably be employed by a health authority. Prison health services should be integrated into national health policies and systems and be fully independent of prison administrations, yet liaise effectively with them.<sup>[784]</sup> The Committee of Ministers of the Council of Europe has likewise concluded that national health authorities should be responsible for health care provision in prisons, which would facilitate the continuity of treatment and 'enable prisoners and staff to benefit from wider developments in treatments, in professional standards and in training'.<sup>[785]</sup> A number of countries have already transferred responsibility of prison health care to public health services because of concern about the quality of care and the role of medical staff.<sup>[786]</sup>

The UN has adopted detailed norms for the fulfilment of the above obligations. Such norms include the Mandela Rules, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners, the Bangkok Rules, the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, and the Guidelines for Action on Children in the Criminal Justice System.<sup>[787]</sup> These instruments are of general application and, for the most part, are not specifically tailored to the treatment of persons who may have drug-related issues during detention or imprisonment. However, both the Mandela Rules and the Bangkok Rules include guidance directly related to drug use, cited by the UN General Assembly Special Session 2016 Outcome Document.<sup>[788]</sup>

The Mandela Rules include three provisions of particular relevance. The first notes that the provision of health care for prisoners is a State responsibility and that people in prison should enjoy the same standard of health care as that available in the community, free of charge and without discrimination on grounds of their legal status.<sup>[789]</sup> The second states that '[h]ealth-care service should be organized in close relationship to the general public health administration and in a way that ensures continuity and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence'.<sup>[790]</sup> The third notes that '[a] physician or other qualified health care professional ... shall see, talk with and examine every prisoner as soon as possible following their admission and thereafter as necessary' and that '[p]articular attention should be paid to ... withdrawal signs from the use of drugs ... and undertaking all appropriate individualized measures or treatment'.<sup>[791]</sup>



The Bangkok Rules also include numerous relevant provisions. They establish that HIV/AIDS programmes and services in penal institutions ‘shall be responsive to the specific needs of women, including prevention of mother-to-child transmission’ and that ‘[i]n this context, prison authorities shall encourage and support the development of initiatives on HIV prevention, treatment and care, such as peer-based education’.<sup>[792]</sup> Furthermore, they establish that prison health services ‘shall provide or facilitate specialized treatment programmes designed for women substance abusers, taking into account prior victimization, the special needs of pregnant women and women with children, as well as their diverse cultural backgrounds’.<sup>[793]</sup> Similar to the Mandela Rules, the Bangkok Rules provide that for women prisoners and detainees, ‘[h]ealth-care service should be organized in close relationship to the general public health administration and in a way that ensures continuity and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence’.<sup>[794]</sup> Furthermore, ‘[a] physician or other qualified health care professional ... shall see, talk with and examine every prisoner as soon as possible following her admission and thereafter as necessary’, and ‘[p]articular attention should be paid to ... withdrawal signs from the use of drugs ... and undertaking all appropriate individualized measures or treatment’.<sup>[795]</sup> Finally, ‘[t]he provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women’s access to such treatment shall be improved, for crime prevention as well for diversion and alternative sentencing’.<sup>[796]</sup>

Regarding the issue of staff attending to people deprived of liberty, the Mandela Rules instruct that all prison staff, prior to entering duty, be provided with training tailored to their general and specific duties and then also provided with ongoing in-service training that includes material on the rights and duties of prison staff in the exercise of their functions, such as respecting the human dignity of all prisoners and the prohibition of certain conduct, particularly torture and other cruel, inhuman, or degrading treatment or punishment.<sup>[797]</sup> Prison staff who work with certain categories of prisoners or who are assigned other specialised functions should receive training that has a corresponding human rights focus.<sup>[798]</sup> The Bangkok Rules further require that all staff assigned to work with women prisoners receive training relating to these prisoners’ gender-specific needs and human rights.<sup>[799]</sup>

UN human rights mechanisms have called attention to the multiple and extreme forms of violence faced by LGBTI persons, which is exacerbated when they are deprived of their liberty and subjected to serious violence and to abuse, including sexual assault and rape, by fellow inmates and staff.<sup>[800]</sup> Transgender people, especially transgender women, are often housed in prisons according to their sex assigned at birth, and exposed to a high risk of rape and other violence and ill-treatment.<sup>[801]</sup> The lack of training and policies aimed at understanding the needs of LGBTI people, recognising people’s self-identified gender, and carrying out proper risk assessments compounds these problems.<sup>[802]</sup> UN human rights mechanisms have recommended that States adopt legislative, administrative, and judicial measures to address and prevent violence against LGBTI people in prison, stressing the fundamental importance of the involvement of LGBTI people in the design, implementation, and evaluation of measures to prevent torture and ill-treatment against them.<sup>[803]</sup>

Guidance issued by the UN Office on Drugs and Crime, World Health Organization, United Nations Development Programme, Joint United Nations Programme on HIV/AIDS, International Labour Organization, and UN Population Fund recommends that the comprehensive package of HIV prevention, care, and treatment interventions, which includes needle and syringe programmes, overdose prevention and management, opioid substitution therapy, and other evidence-based medical treatment, be tailored to the specific needs of women and transgender people, including with respect to sexual and reproductive health and hormone therapy (according to national guidance), and equivalent to services in the community. The guidance also notes the need for

initiatives to acknowledge and address sexual and other forms of violence faced by women, men who have sex with men, and transgender people in prison and highlights the importance of ensuring that representatives of different population groups in prison – including adolescents and young people, women, men, people who inject drugs, transgender people, and people living with HIV – enjoy meaningful participation in the planning, implementing, and monitoring of prison HIV, tuberculosis, and hepatitis programmes in order to develop effective strategies that are responsive to their respective realities.<sup>[804]</sup>

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **4. Indigenous peoples**

Indigenous peoples have the rights to self-determination and to freely pursue their economic, social, and cultural development. They also have the right to own, use, develop, and control the lands, territories, and resources that they have traditionally owned, occupied, or otherwise acquired. Indigenous peoples have the right to conserve their lands and protect them from harm caused by drug control measures.

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **4.1 Rights to self-determination; to lands, territories, and resources; and to conservation of lands**

Indigenous peoples have the rights to self-determination and to freely pursue their economic, social, and cultural development. They also have the right to own, use, develop, and control the lands, territories, and resources that they have traditionally owned, occupied, or otherwise acquired. Indigenous peoples have the right to conserve their lands and protect them from harm caused by drug control measures.

**In accordance with these rights, States should:**

- i. Ensure that drug control measures do not deprive indigenous peoples of their right to self-determination or their right to subsistence.
- ii. Ensure that drug control measures recognise, respect, and protect the rights of indigenous peoples to own, use, develop, and control their lands, territories, and resources.
- iii. Ensure that drug control measures do not negatively affect the right to conservation or productive capacity of indigenous peoples' lands.
- iv. Take effective measures to prevent and redress harms to the environment and productive capacity of indigenous territories and resources caused by drug control measures.
- v. Require comprehensive environmental impact assessments to be carried out with the participation of relevant indigenous peoples in order to assess the environmental, economic, social, cultural, and spiritual impacts of drug control activities prior to their commencement and to determine the extent to which these activities can be modified.
- vi. Monitor the implementation of such drug control activities and modifications.
- vii. In the event of harm resulting from drug control measures, develop and implement adequate and effective remediation measures in consultation with affected populations.

## Commentary

The right to both political and economic self-determination, by virtue of which all peoples have the right to freely determine their political status and freely pursue their economic, social, and cultural development, is guaranteed in a number of international and regional human rights instruments.

[805] The relevant provisions of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights make clear that '[i]n no case may a people be deprived of their means of subsistence'. [806] The United Nations Declaration on the Rights of Indigenous Peoples likewise prohibits States from depriving indigenous peoples of their means of subsistence [807] and requires States to ensure the protection of the environment and the productive capacities of indigenous peoples' territories. [808]

The Committee on Economic, Social and Cultural Rights has acknowledged that 'the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and development, and this includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise acquired'. [809] The Committee advises States to respect and protect indigenous peoples' cultural values and rights associated with their relationship with nature in order to prevent the degradation of their particular way of life (including their means of subsistence), the loss of their natural resources, and, ultimately, the loss of their cultural identity. [810] The Declaration on the Rights of Indigenous Peoples affirms the right of indigenous peoples to be secure in the enjoyment of their own means of subsistence and development and to just and fair redress where they are deprived of these means. [811]

Efforts to eradicate illicit drug crops, such as aerial fumigation, have negatively affected indigenous peoples' rights to subsistence, health, and livelihood. Indigenous peoples and indigenous organisations report that such spraying has destroyed subsistence crops; damaged soil quality and yields; harmed fauna, flora, and water; affected indigenous communities' economic activities and access to adequate food; and, in turn, caused their involuntary displacement. [812] UN human rights mechanisms have raised particular concerns about the adverse effects that aerial spraying of glyphosate to eradicate coca crops has on indigenous adults' and children's environment, economic activities, access to food, health, social life, and culture. [813] In this light, the Committee on the Rights of the Child recommends that States carry out independent, rights-based environmental and social impact assessments of aerial fumigation of illicit drug crops, ensure the prior consultation of affected indigenous communities, and take all precautions to avoid harmful impacts on the health of indigenous children in particular. [814]

### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances requires that each State Party take 'appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory'. [815] However, in order for such prevention and eradication to be 'appropriate', it must respect 'fundamental human rights' and take 'full account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment'. [816] Article 14 of the 1988 Convention thus recognises the traditional use of certain plants, including the coca bush. However, it also stipulates that measures shall not be less stringent than the obligations of the 1961 Single Convention on Narcotic Drugs, [817] which require States to destroy coca bushes, opium poppies, and cannabis plants 'if illegally cultivated'. [818] This norm creates potential tensions with human rights requirements to protect indigenous peoples' rights to

subsistence and to own, use, develop, control, and conserve lands, territories, and resources that they have traditionally owned, occupied, or otherwise acquired.

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **4.2 Right to free, prior, and informed consent**

Indigenous peoples have the right to be consulted and to free, prior, and informed consent regarding matters affecting them. This includes the right to be consulted on drug control measures and national and international agreements that may affect their lands, resources, cultures, and identities, as well as the right to give or withhold their consent.

**In accordance with this right, States should:**

- i. Consult and cooperate in good faith with relevant indigenous peoples, through their representative institutions, in order to obtain their free, prior, and informed consent before adopting or implementing any drug control measure that may affect them or their territories. Ensure that consultations continue as needed throughout the period of implementation.
- ii. Adopt legislative, administrative, and other measures necessary to recognise and ensure the right of indigenous peoples to be effectively consulted, in accordance with their traditions and customs, and the right to give or withhold their free, prior, and informed consent with regard to drug control measures that may affect them or their territories.

#### **Commentary**

States' obligation to consult in good faith with indigenous peoples with the objective of securing their free, prior, and informed consent on matters that affect their rights and interests has repeatedly been affirmed in international and regional instruments,<sup>[819]</sup> by UN treaty bodies,<sup>[820]</sup> and by other UN human rights mechanisms.<sup>[821]</sup> Regional human rights courts and commissions have also interpreted the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, and the American Declaration of the Rights and Duties of Man to recognise States' duties and obligations to secure free, prior, and informed consent.<sup>[822]</sup> Where the rights implicated are essential to the survival of indigenous groups as distinct peoples and the foreseen impacts on the exercise of the rights are significant, indigenous consent to the impacts is an actual requirement – and not simply an objective – of consultations.<sup>[823]</sup>

The Special Rapporteur on the rights of indigenous peoples has recommended that 'indigenous peoples that might be affected should be consulted on anti-drug policies and operations that involve the presence of national or foreign police or armed forces' and has noted that 'guarantees should be given that the lives, cultures, lands and natural resources of the indigenous peoples are not violated as a result of such operations. Abuses committed by drugs squad officials must be investigated and punished'.<sup>[824]</sup>

### **III. Obligations Arising from the Human Rights of Particular Groups:**

#### **4.3 Rights to enjoy culture and to profess and practise religion**

Indigenous peoples have the right to practise and revitalise their cultural traditions and customs and to manifest, practise, develop, and teach their spiritual and religious traditions, customs, and ceremonies. This includes the right to use and cultivate plants and plant-based substances that

have psychoactive effects, where these are part of their cultural, spiritual, or religious practices. Indigenous peoples have the right to maintain, control, cultivate, use, and protect and conserve medicinal and other plants and seeds that form a part of their cultural or ethnic identity or part of their spiritual or religious traditions, customs, and ceremonies. This includes plants that have psychoactive effects.

**In accordance with these rights, States should:**

i. Refrain from interfering with indigenous peoples' exercise of their cultural, spiritual, and religious practices, including those involving plants that have psychoactive effects.

ii. Adopt appropriate legislative, administrative, and other measures to ensure that drug control efforts do not interfere with indigenous peoples' rights to enjoy their culture and to practise their religion, including with members separated by international borders.

iii. Take measures to protect indigenous communities from actions by private companies and third parties that deny indigenous people their traditional sources of nutrition, medicines, livelihoods, and ceremonies, including those involving plants that have psychoactive effects.

**In addition, States should:**

iv. Consider exemptions within drug legislation allowing indigenous peoples to use controlled psychoactive substances for traditional, cultural, and religious purposes.

**Commentary**

The right of everyone to take part in cultural life is enshrined in numerous international instruments. [825] The Human Rights Committee has concluded that a member of a minority shall not be denied the right to enjoy their culture and that measures whose impact amounts to a denial of this right are incompatible with obligations to ensure the right to enjoy one's own culture. [826] Other international and regional instruments further protect the right to manifest a religion or belief, [827] specifically providing for the protection of the rights of ethnic, religious, and linguistic minorities, in community with other members of their group, to profess and practise their religion. [828] The International Labour Organization's Indigenous and Tribal Peoples Convention similarly requires States to protect 'the social, cultural, religious and spiritual values and practices' of indigenous peoples and the integrity of these practices. [829] The Declaration on the Rights of Indigenous Peoples further recognises indigenous peoples' rights to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, [830] and the right to 'maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders'. [831]

The Working Group on Arbitrary Detention has recommended that States '[p]rotect 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'. [832] The Working Group also recommends that States refrain from taking 'punitive action against subsistence and small-scale farmers who produce illicit crops' and instead 'work with them to develop income from alternative agricultural crops and increase government services in their communities'. [833]

According to the Committee on Economic, Social and Cultural Rights, indigenous peoples 'have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources,

seeds, medicines'.<sup>[834]</sup> The Declaration on the Rights of Indigenous Peoples includes similar protections.<sup>[835]</sup> The Committee on Economic, Social and Cultural Rights has expressed general concern about the lack of adequate protection for and information on the intellectual property rights and cultural heritage rights of indigenous peoples and recommends that State legislation include clear, precise norms for the effective protection of such rights.<sup>[836]</sup> It further recommends that States take measures to prevent third parties from interfering in the exercise of these rights, including by preventing the appropriation and commodification of indigenous knowledge and traditional medicine.<sup>[837]</sup>

Prohibitions on the production of certain plants, such as coca and opium poppy, should not deprive indigenous peoples of the right to cultivate and use plants subject to international control if they are essential elements that contribute to their rights to enjoy their traditional culture and to profess and practise their religion, and therefore also to the general health and well-being of their communities.<sup>[838]</sup> The right of indigenous people to cultivate and use coca as a manifestation of their cultural identity has been recognised in national constitutions,<sup>[839]</sup> legislation,<sup>[840]</sup> and jurisprudence. For example, Colombia's Constitutional Court has recognised the rights of indigenous peoples to cultivate and use coca for traditional practices, as required by the country's international law commitments.<sup>[841]</sup> Notwithstanding the above, most States that have such legal protections also criminalise the possession and cultivation of coca for personal use.<sup>[842]</sup>

Even when certain substances are not under international control, indigenous people have faced criminal sanctions. For example, despite the statutory exemption from the prohibition on consuming peyote in religious ceremonies in the United States since 1994,<sup>[843]</sup> the UN Special Rapporteur on the rights of indigenous peoples in 2012 referred to allegations by the Native American Church of North America that peyote users and harvesters were facing 'wrongful arrest, confiscation, prejudicial treatment in family custody cases, and discrimination in employment'.<sup>[844]</sup>

#### *Relationship to the UN drug control conventions*

Certain provisions of the drug control conventions may conflict with specific rights of indigenous peoples to enjoy their culture and to profess and practise their religion. For example, the 1961 Single Convention on Narcotic Drugs requires that States abolish a range of traditional practices, including traditional uses of coca leaves, the quasi-medical use of opium, and traditional and religious uses of cannabis,<sup>[845]</sup> and establishes the general obligation to limit the permissible use of controlled substances strictly to medical and scientific purposes.<sup>[846]</sup> However, it also makes this general obligation 'subject to the provisions of this Convention',<sup>[847]</sup> which therefore at least permits flexibility to avoid criminalising indigenous individuals for their possession, purchase, or cultivation for personal consumption, although it also leaves other activities involving the use of substances for traditional purposes subject to criminal sanction.

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances does allow for 'traditional licit uses'. However, it also states that any measures taken by States in relation to such substances may not be 'less stringent' than required under the 1961 Single Convention,<sup>[848]</sup> which requires States to destroy coca bushes, opium poppies, and cannabis plants 'if illegally cultivated'.<sup>[849]</sup> There is, therefore, an apparent conflict between contemporary indigenous rights standards and the UN drug control conventions that requires close attention.

The United Nations Permanent Forum on Indigenous Issues has called for the amendment or repeal of those portions of the 1961 Single Convention on Narcotic Drugs regarding coca leaf chewing that are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural



practices.<sup>[850]</sup> Bolivia withdrew from and then re-acceded to the treaty with a reservation protecting the country's right to permit traditional coca leaf chewing, the consumption and use of coca leaf for cultural and medicinal purposes, and the cultivation, trade, and possession of coca to the extent necessary for these uses.<sup>[851]</sup>

### III. Obligations Arising from the Human Rights of Particular Groups:

#### 4.4 Right to traditional medicines and health practices

Indigenous peoples have the right to their traditional medicines and to maintain their traditional health practices, including those related to their spiritual health. This necessitates the conservation of their vital medicinal plants, some of which have psychoactive properties.

**In accordance with these obligations, States should:**

- i. Refrain from depriving indigenous peoples of the right to cultivate and use psychoactive plants that are essential to the overall health and well-being of their communities.
- ii. Repeal, amend, or discontinue laws, policies, and practices that inhibit indigenous peoples' access to controlled psychoactive substances for the purposes of maintaining or increasing the overall health and well-being of their communities, and consider adopting appropriate legislative, administrative, and other measures to guarantee the exercise of the right to traditional medicines and health practices.

**In addition, States may:**

- iii. Utilise the available flexibilities in the UN drug control conventions to decriminalise indigenous peoples' possession, purchase, or cultivation of controlled psychoactive substances for personal consumption.
- iv. Consider taking specific measures to protect the right of indigenous peoples to use psychoactive substances for specially defined purposes, including those related to their right to health.

#### **Commentary**

The Committee on Economic, Social and Cultural Rights has recommended the protection of vital medicinal plants necessary to the full enjoyment of the right to health of indigenous people.<sup>[852]</sup> The Committee has further noted that 'in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension'.<sup>[853]</sup> The Committee therefore also 'considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health'.<sup>[854]</sup>

#### *Relationship to the UN drug control conventions*

The 1961 Single Convention on Narcotic Drugs requires that States abolish a range of traditional practices, including traditional uses of coca leaves, the quasi-medical use of opium, and traditional and religious uses of cannabis.<sup>[855]</sup> It further establishes the general obligation to limit the permissible use of controlled substances strictly to medical and scientific purposes.<sup>[856]</sup> However, it also makes this general obligation 'subject to the provisions of this Convention',<sup>[857]</sup> which therefore at least permits flexibility to avoid criminalising indigenous individuals for their possession, purchase,

or cultivation for personal consumption related to medicinal purposes, although it also leaves other activities involving the use of substances for traditional purposes subject to criminal sanction.

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances does allow for 'traditional licit uses'. However, it also states that any measures taken by States in relation to such substances may not be 'less stringent' than required under the 1961 Single Convention,<sup>[858]</sup> which requires States to destroy coca bushes, opium poppies, and cannabis plants 'if illegally cultivated'.<sup>[859]</sup> There is, therefore, an apparent conflict between contemporary indigenous rights standards and the UN drug control conventions that requires close attention.

## IV. Implementation: 1. Data collection

### States should:

- i. Collect and disseminate appropriate information to enable the formulation and implementation of human rights-compliant drug control laws and policies. These data should be disaggregated by relevant factors, including health status (such as drug dependence), age, sex, race and ethnicity, sexual orientation and gender identity, and economic status (including involvement in sex work).
- ii. Ensure that data collection for the purpose of drug law and policy formulation, implementation, or other analysis complies with relevant international standards for data protection.

### Commentary

International law and standards recognise that the collection and disaggregation of necessary data, including statistical and research data, is critical to help uncover patterns of discrimination with respect to drug use, drug-related harm, and drug enforcement efforts; to identify and address barriers faced by affected individuals and populations in accessing relevant drug-related and other health-related information, treatment, and care, as well as their affected rights and associated remedies; and to thereby assist States in the implementation of their human rights obligations.<sup>[860]</sup>

The Committee on the Elimination of Discrimination against Women has raised concern about the lack of data on women who use drugs, both inside and outside prison, and among different age groups,<sup>[861]</sup> including the lack of data on the availability of antiretroviral drugs for this population;<sup>[862]</sup> the need for and availability of drug dependence and other health care treatment for women who use drugs;<sup>[863]</sup> and the incidence and impact of drug and other substance dependence on women and gender relations.<sup>[864]</sup> The Committee has recommended that States collect data on drug use and drug dependence among women and take measures to address these issues, in prison and society at large, to determine the extent of the problem<sup>[865]</sup> and its incidence and effects.<sup>[866]</sup> Specifically, it has called on States to develop appropriate interventions for drug dependence and determine the number of those living with HIV in need of medical care;<sup>[867]</sup> to understand the possible correlation between drug use and violence against women;<sup>[868]</sup> to provide information on measures to prevent and reduce abuse;<sup>[869]</sup> and to provide information on the availability of counselling and rehabilitation services.<sup>[870]</sup> The Committee has also recommended 'conducting a nationwide study to establish the number of women who use drugs, including while pregnant, in order to inform strategic planning'.<sup>[871]</sup>

The Committee on the Elimination of Racial Discrimination has raised concern about the disproportionately high rate of incarceration among indigenous peoples and persons belonging to minority groups, in particular African-Canadians, due in part to the over-policing of these

populations, drug policies, and racially biased sentencing and has recommended systematic data collection and public reporting on the demographic composition of the prison population and sentencing of minority offenders.<sup>[872]</sup>

The Committee against Torture has raised concern about the lack of relevant statistical data and information on the maximum duration of solitary confinement of people in compulsory drug treatment centres and has recommended the collection and regular publication of comprehensive disaggregated data on the use of solitary confinement and restraints, and of related suicide attempts and self-harm.<sup>[873]</sup> The Human Rights Committee has noted with concern the availability of the death penalty for a number of crimes, including drug-related crimes, that do not meet the threshold of most serious crimes within the meaning of article 6(2) of the International Covenant on Civil Political Rights, as well as the lack of publicly available data on the number of persons sentenced to death, executed, or on death row. It has recommended the publication of official figures on death sentences and executions, disaggregated by sex, age, ethnicity, religion, and crime.<sup>[874]</sup>

Resolutions issued by the Commission on Narcotic Drugs have highlighted the importance of tools to improve data collection and the monitoring and evaluation of international commitments and have called on States to consider committing budgetary resources for these purposes.<sup>[875]</sup> The UN General Assembly Special Session 2016 Outcome Document likewise promotes 'reliable data collection', requesting that States submit, on a voluntary basis, information about 'human rights and the health, safety and welfare of all individuals, communities and society'.<sup>[876]</sup>

## IV. Implementation: 2. Human rights review and budget analysis

### States should:

- i. Consider undertaking a transparent review of drug laws and policies to assess human rights compliance.
- ii. Subject all proposed drug control legislation and policies to transparent human rights risk and impact assessments.
- iii. Undertake a budgetary review to ensure the progressive realisation of the right to health in relation to drug use and dependence.
- iv. Carefully consider and justify any cuts in the allocation of resources for drug treatment, harm reduction, and other health services for people who use drugs where such cuts entail retrogressive measures.

### Commentary

The International Covenant on Economic, Social and Cultural Rights requires States Parties to take steps, individually and through international assistance and cooperation, to the maximum of their available resources, to progressively achieve the rights recognised in the Covenant.<sup>[877]</sup> This may require appropriate budgetary planning and the allocation of financial and economic resources for drug treatment, harm reduction, and other health and social services for people who use drugs. The Covenant also requires legislative reform in order to create a legal and policy environment conducive to the implementation of such services.<sup>[878]</sup>

There is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. States have the burden of proving that any deliberately retrogressive measures taken have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State Party's maximum available resources.<sup>[879]</sup> The adoption of retrogressive measures incompatible with core obligations under the right to health (e.g., the obligations to ensure the right to access health facilities, goods, and services on a non-discriminatory basis and to provide essential drugs, such as methadone and buprenorphine for drug dependence treatment and morphine for pain treatment) constitutes a violation of the right to health.<sup>[880]</sup>

The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child have raised concerns about the negative impact of austerity measures on access to health in general and on marginalised and disadvantaged groups such as women and children.<sup>[881]</sup> The Committee on Economic, Social and Cultural Rights has noted with concern the lack of information on the impact of austerity measures on the enjoyment of economic, social, and cultural rights and has recommended that a review be undertaken regarding measures taken to respond to economic crises with a view to ensuring economic, social, and cultural rights and that human rights impact assessments be instituted in the policymaking process.<sup>[882]</sup> The Committee has also recommended that austerity measures be imposed only if they are temporary, necessary, and proportionate; are not discriminatory; and do not disproportionately affect the rights of disadvantaged and marginalised individuals and groups; further, they should ensure, at all times, the protection of the core content of economic, social, and cultural rights.<sup>[883]</sup> The Committee on the Elimination of Discrimination against Women has recommended that a study be conducted on the impact of austerity measures on women's health<sup>[884]</sup> and adopt temporary special measures in legislation, budgetary measures, and social and health policies as a rapid response to some of the worst problems faced by women in the context of austerity measures.<sup>[885]</sup> The Committee on the Rights of the Child has recommended that the impact of financial restrictions in the area of health care be minimised and that that austerity measures in the area of health care be evaluated on the basis of a child rights impact assessment to ensure that such measures do not have a negative impact on children's health and well-being.<sup>[886]</sup>

## **IV. Implementation: 3. Obligation of International cooperation and assistance**

**In accordance with these obligations, States in a position to assist should:**

- i. Consider providing resources for harm reduction, essential controlled medicines, and other health and social services for people who use drugs and who need controlled drugs for pain relief.
- ii. Consider providing resources to develop specific viable and sustainable economic alternatives for individuals and communities particularly vulnerable to exploitation in the illicit drug economy.
- iii. Adopt clear policy guidelines incorporating human rights standards for the provision of financial and technical aid, for international judicial and law enforcement cooperation in drug-related criminal matters, and for demand reduction and related projects in recipient States.
- iv. Exercise due diligence to ensure that international cooperation and assistance provided or received for drug-related enforcement and for demand reduction and related projects is carried out in full compliance with international law and human rights standards and does not contribute,

directly or indirectly, to the use of the death penalty for drug-related crimes, to torture or other cruel, inhuman, or degrading treatment or punishment, or to fostering or perpetuating unlawful discrimination.

**States that do not have sufficient capacity or resources to meet all of their human rights obligations should:**

- i. Seek assistance, including financial and technical assistance, from the international community for harm reduction services, access to essential controlled medicines, and other health and social services for people who use drugs and who need controlled drugs for pain relief.
- ii. Seek assistance, including financial and technical assistance, from the international community to develop specific viable and sustainable economic alternatives for individuals and communities particularly vulnerable to exploitation in the illicit drug economy.
- iii. Seek assistance, including financial and technical assistance, from the international community for criminal justice system diversion projects and other alternatives to coercive sanctions for drug offences and drug-related offences.

**Commentary**

All UN Member States have an obligation to engage in international cooperation, including financial and technical assistance, to achieve universal respect for and observance of all human rights and fundamental freedoms for all, without distinction.<sup>[887]</sup> States' obligations with respect to international cooperation and assistance extend to their roles as members of international and regional organisations, including technical agencies and international financial organisations.<sup>[888]</sup> UN organs and agencies involved in any aspect of development cooperation to promote human rights in the context of their development activities should 'scrupulously avoid' involvement in projects that contravene human rights obligations under the International Covenant on Economic, Social and Cultural Rights or that promote or reinforce the violation of Covenant rights.<sup>[889]</sup>

The Committee on the Rights of the Child has called for countries to seek international cooperation to support the assistance of children who are dependent on drugs.<sup>[890]</sup> The Committee on the Elimination of Discrimination against Women has called on States to increase efforts, including via international cooperation, to address drug- and gang-related violence responsible for internal displacement and to take urgent measures to provide comprehensive protection and assistance to women who are internally displaced for these reasons.<sup>[891]</sup>

The Special Rapporteur on extrajudicial, summary, or arbitrary executions has raised concern that international cooperation and collaboration on criminal and other matters may contribute to the imposition of the death penalty for drug-related crimes, in violation of international law and the assisting State's international legal commitments.<sup>[892]</sup> The Special Rapporteur recommends that States amend national laws on extradition and deportation to specifically prohibit the enforced transfer of persons to States where there is a genuine risk that the death penalty may be imposed in violation of internationally recognised standards, unless adequate assurances are obtained.<sup>[893]</sup> The Special Rapporteur also urges States to develop guidelines on the provision of financial and technical aid and mutual assistance, especially with regard to drug-related offences, to ensure that such efforts do not support violations of the right to life.<sup>[894]</sup> The Working Group on Arbitrary Detention has recommended that States monitor technical and financial assistance provided to other countries for drug enforcement and other operations to ensure that such assistance does not contribute to or result in human rights violations and to reduce or cease such assistance 'as

appropriate'. The Working Group has recommended that international and regional organisations likewise monitor the provision of such assistance to ensure that it does not contribute to human rights violations.<sup>[895]</sup>

International organisations are also expected to address human rights abuses in connection with their programmes. For example, the UN Office on Drugs and Crime, as part of the UN Secretariat, has issued internal guidance on the promotion and protection of human rights in its work, including its technical assistance programmes, on the basis of the Charter of the United Nations and the UN Human Rights Due Diligence Policy.<sup>[896]</sup> This guidance includes a range of possible response actions that can be undertaken to address human rights concerns, which should be assessed on a case-by-case basis and in conjunction with the UN system. It also indicates that in situations where a country receiving technical assistance from the UN Office on Drugs and Crime continues, despite the Office's interventions, to apply the death penalty for drug offences and where the provision of specific technical support could amount to aiding or assisting this rights violation, the Office may employ a temporary freeze or withdrawal of that specific support.

#### *Relationship to the UN drug control conventions*

The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances addresses cooperation in crop eradication efforts, including 'integrated rural development leading to economically viable alternatives to illicit cultivation' and 'other appropriate measures of co-operation'.<sup>[897]</sup> The Commentary on the 1988 Convention explains that this provision 'creates no legal obligation on parties, but draws attention to the need, in some countries and regions, for programmes of integrated rural development designed, in effect, to rebuild a local economy hitherto partly or entirely based on illicit cultivation'.<sup>[898]</sup> The 1988 Convention also includes extensive provisions relating to international cooperation, including extradition,<sup>[899]</sup> mutual legal assistance,<sup>[900]</sup> and law enforcement cooperation.<sup>[901]</sup> States' human rights obligations apply at all times in the implementation of these provisions.

## **V. Treaty interpretation principles: 1. Harmonisation and simultaneous compliance with human rights obligations**

i. Parties to the international drug control treaties are bound to implement their obligations arising from those treaties in full respect for their other obligations under international law, including human rights law. Consistent with international law, these obligations 'shall be interpreted in good faith in accordance with the ordinary meaning to be given in light of the terms of the treaty in their context and in the light of its object and purpose'.<sup>[902]</sup> Where there appears to be incompatibility, the principles of treaty interpretation emphasise the strong presumption against normative conflict in international law.<sup>[903]</sup>

ii. States are assumed not to derogate from their previous obligations when they create a new obligation, such as by ratifying a treaty. Where a number of apparently contradictory instruments are simultaneously applicable, international case law and academic opinion endeavour to construe them in such a way as to coordinate their effects and avoid any opposition between them. Two diverging commitments must therefore be harmonised as much as possible so that they produce effects that are fully in accordance with existing law,<sup>[904]</sup> including human rights law.

iii. Obligations contained within international drug control treaties may not be used as a basis for violating concomitant international human rights obligations. Provisions contained within an international drug control treaty that allow States to 'adopt more strict or severe measures' than



those provided by the relevant treaty should be interpreted as allowing only for such measures that align with States' international law obligations, including human rights law.

## Commentary

When incorporating the obligations of the international drug conventions into domestic law and policy, States must ensure that drug control measures are consistent with concurrent obligations within international human rights law. Where real or perceived conflicts arise between the two legal regimes, these must be resolved in a manner that safeguards human rights protections.

Traditionally, the concept of a conflict of norms describes instances in which it is impossible for a State to simultaneously comply with obligations under two or more treaties.<sup>[905]</sup> In cases where there is a presumed or actual conflict of laws, general rules of treaty interpretation are found under articles 31–33 of the Vienna Convention on the Law of Treaties,<sup>[906]</sup> which are seen as providing authoritative guidance in these matters.<sup>[907]</sup> According to the International Law Commission, articles 31 and 32 are generally agreed to reflect customary international law.<sup>[908]</sup>

As described by the Study Group on the Fragmentation of International Law, '[i]n international law, there is a strong presumption against normative conflict'.<sup>[909]</sup> It follows that in circumstances where two or more treaty obligations are simultaneously engaged, the 'correct', or at least most preferable, interpretation is one that seeks consistency with all the relevant obligations, violating none. This is not simply a question of one body of law 'trumping' or overriding another. The process of interpretation requires States to balance concomitant legal obligations across multiple regimes. As explained by the European Court of Human Rights:

Where a number of apparently contradictory instruments are simultaneously applicable, international case-law and academic opinion endeavour to construe them in such a way as to coordinate their effects and avoid any opposition between them. Two diverging commitments must therefore be harmonised as far as possible so that they produce effects that are fully in accordance with existing law.<sup>[910]</sup>

For this reason, drug control obligations must never be used to justify laws or policies that violate human rights, as the appropriate implementation of the drug control norm at the national level must take account of human rights standards. The death penalty for drug offences provides a useful illustration of this principle. Executing people for drug-related offences is a clear violation of international human rights law. However, it has been suggested that the international drug control treaties create the option for States to implement capital punishment for drug-related offences,<sup>[911]</sup> in effect overriding or negating human rights obligations.

Capital punishment is not mentioned in the drug conventions. Whether or not a State believes that the absence of comment on this question makes the death penalty a permissible sanction under international drug control law, there is clearly nothing in drug treaties obligating States to adopt capital drug laws. In other words, legislating for capital punishment for drug offences is not required by international drug control law, while executing people for drug offences is prohibited by international human rights law. Therefore, the only option in domestic law consistent with both legal regimes, violating neither, is one that does not allow the death penalty for drug offences. This approach is consistent with that of the International Law Commission, which concludes that '[i]t is a generally accepted principle that when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations'.<sup>[912]</sup>

## V. Treaty interpretation principles: 2. Standards for limitations on rights

- i. Nothing in the international drug control treaties may be interpreted as implying for any State, group, or person a right to engage in any activity or to perform any act aimed at or having the effect of violating any of the rights and freedoms guaranteed in international human rights instruments or limiting these rights to a greater extent than is specifically provided for in those instruments.
- ii. Public health, safety, and order may be invoked as grounds for limiting certain rights, such as the freedom to manifest one's religion or beliefs, the freedom of expression, the right to peaceful assembly, or the freedom of association, in order to deal with a serious threat to the health or safety of the population or its individual members.
- iii. National security may be invoked to justify measures limiting certain rights only when such measures are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.
- iv. Where a State seeks to limit a specific right in the pursuit of fulfilling a drug control obligation, such limitation must be consistent with established general interpretive principles relating to the requirements for lawful limitations on rights, which apply to only some human rights norms. **These principles include the following:**
  - a. Certain human rights protections cannot be limited at any time, for any reason. These include the right to life; the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment; freedom from slavery; the right not to be convicted of a criminal offence for acts that were not criminalised at the time they were carried out; and the right to freedom of thought, conscience, and religion.
  - b. Any limitation must be provided for by a national law of general application. Any such law must be clear and accessible to everyone. A limitation cannot be provided for retroactively.
  - c. The scope of the limitation shall not be interpreted so as to jeopardise the essence of the right concerned, and any limitation shall be interpreted strictly and in favour of the right at issue.
  - d. No limitation shall be applied in an arbitrary or unreasonable manner.
  - e. No limitation shall be discriminatory or applied in a manner that constitutes legally prohibited discrimination.
  - f. The limitation must meet the 'necessity' test established in international human rights law, which means that the measure responds to a pressing social need, pursues a legitimate aim, and is proportionate to that aim. This includes the requirement that the state use no more restrictive means than are required for achieving the purpose of the limitation.
  - g. The State always bears the burden of justifying a limitation on a human right that it is legally bound to respect.
  - h. Adequate safeguards and effective remedies shall be provided by law against the illegal or abusive imposition or application of limitations on human rights.

### Commentary

Not all human rights obligations enjoy the same level of protection or share the same character in law. Some rights are absolute and unrestricted in all circumstances, including times of war and public emergency, such as the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment. However, most human rights are not absolute in nature and may be legally limited or restricted by States in various ways and in various situations.<sup>[913]</sup> Section V.2 of the Guidelines addresses the limitation of rights in the context of drug control and affirms the primacy of the normative legal tests that must be applied when considering whether a limitation or restriction is legal and legitimate.

### *Limitations*

Public health, safety, and order may be invoked as grounds for limiting certain rights – such as the right to liberty of movement and freedom to choose one’s residence; the freedom to manifest one’s religion or beliefs;<sup>[914]</sup> freedom of expression;<sup>[915]</sup> the right to peaceful assembly;<sup>[916]</sup> and freedom of association<sup>[917]</sup> – in order to deal with a serious threat to the health or safety of the population or its individual members.

National security may be invoked to justify measures limiting certain rights only when such measures are taken to protect the existence of the nation or its territorial integrity or political independence against force or the threat of force.<sup>[918]</sup>

In some cases, the legitimate limitations or restrictions on a right are codified within the treaty itself. Examples of this are found in article 19 of the International Covenant on Civil and Political Rights (freedom of expression) and article 5 of the European Convention on Human Rights (right to liberty and security). However, even in cases where the scope of legal restrictions are not specified within a treaty obligation, all limitations must meet specific tests in order to be considered justified and therefore legal. Section V(2) of the Guidelines affirms these established tests, as laid out by the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee, and the European Court of Human Rights, among other authorities.

### *Derogations*

In times of public emergency that ‘threaten[] the life of the nation and the existence of which is officially proclaimed’, States may take the more far-reaching measure of temporarily derogating from (suspending) certain human rights obligations. Such measures must be strictly limited to the extent required by the exigencies of the situation, non-discriminatory, and imposed only for the time required to combat the emergency.<sup>[919]</sup>

As with limitations, certain human rights protections cannot be derogated from. These include the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment; freedom from slavery; the right not to be convicted of a criminal offence for acts that were not criminalised at the time they were carried out; and the right to freedom of thought, conscience, and belief.

No State has ever used drug control as the basis for derogating from its international human rights obligations. It is unlikely that any situation regarding drugs could reach the level required for a State to derogate. The Guidelines in this section therefore focus on limitations.

### *Relationship to the UN drug control conventions*

The conventions include provisions that, if implemented, necessarily require limitations on rights, including the criminalisation of personal possession (right to privacy) and the criminalisation of

incitement (freedom of expression). In each case, such provisions include a clause stating that such interventions are subject to constitutional limitations, which engages national bills of rights and similar limitations tests as those provided under international human rights law.

## References

4. <sup>^</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), preamble.
5. <sup>^</sup> Yearly Supplement of the Secretary-General to His Quinquennial Report on Capital Punishment, UN Doc. A/HRC/30/18 (2015), para. 5.
6. <sup>^</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 1.
7. <sup>^</sup> *Vienna Declaration and Programme of Action*, World Conference on Human Rights, Vienna, 14–25 June 1993, UN Doc. A/CONF.157/24 (Part I) (1993), para. 5.
8. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), para. 43
9. <sup>^</sup> See Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/6 (2019), para. 46; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Mauritius*, UN Doc. E/C.12/MUS/CO/5 (2019), para. 53; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Estonia*, UN Doc. E/C.12/EST/CO/3 (2019), paras. 44(a), 46
10. <sup>^</sup> See Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), para. 3; see also *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, UN Doc. A/HRC/10/44 (2009), para. 74(e).
11. <sup>^</sup> See, e.g., Charter of the United Nations, 1 UNTS XVI (1945), art. 1(3); Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), arts. 1, 7; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), arts. 2(1), 26; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 2(2); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979), arts. 2, 3; Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), arts. 3, 4, 5; International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965), art. 5; Convention on the Rights of the Child, G.A. Res. 44/25 (1989), art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158 (1990), art. 1(1); American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 1; African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), arts. 2, 3, 19; [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 14; Protocol No. 12 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 177 (2000), art. 1; Arab Charter on Human Rights (2004), art. 3 (subject to limitations on women's equality and protections against discrimination in Islamic Shari'a and 'other divine laws, legislation and international instruments'); see also Committee against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc. CAT/C/GC/2 (2008); Committee on the Elimination of Racial Discrimination, *General Recommendation No. 20: Non-Discriminatory Implementation of Rights and Freedoms*, UN Doc. A/51/18 (1996); Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (1989); Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-*

*discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009); *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007), principle 2; *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (2017), additional state obligations relating to principle 2.

12. <sup>^</sup> See, e.g., Charter of the United Nations, 1 UNTS XVI (1945), art. 1(3); Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 2; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), arts. 2(1), 26; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 2(2); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965), art. 5; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 20: Non-Discriminatory Implementation of Rights and Freedoms*, UN Doc. A/51/18 (1996); American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 1; African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 2; [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 14; Protocol No. 12 to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 177 (2000), art. 1; Arab Charter on Human Rights (2004), art. 3 (subject to limitations on women's equality and protections against discrimination in Islamic Shari'a and 'other divine laws, legislation and international instruments'); Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009), paras. 10, 28, 33, 35; Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol I) (1989), para. 6; Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), paras. 19, 28, 33, 35; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (2010), para. 9; *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007), principle 2; *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (2017), additional state obligations relating to principle 2.
13. <sup>^</sup> See, e.g., Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009), para. 7.
14. <sup>^</sup> World Health Organization, *Neuroscience of Substance Use and Dependence* (2004); see also UN Office on Drugs and Crime and World Health Organization, *Principles of Drug Dependence Treatment* (2008).
15. <sup>^</sup> See, e.g., *Marsden v. HREOC* [2000] FCA 1619 (Australia); Australia, Social Security Act 1991, Social Security (Tables for the Assessment of Work-Related Impairment for Disability Support Pension) Determination 2011, table 6; Canada, Human Rights Act, R.S.C., 1985, c. H-6, sec. 25.
16. <sup>^</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 5.
17. <sup>^</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kyrgyzstan*, UN Doc. CEDAW/C/KGZ/CO/4 (2015), para. 38; see also Committee on Economic,



Social and Cultural Rights, *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, UN Doc. E/C.12/2005/4 (2005), para. 5; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, UN Doc. CERD/C/GC/32 (2009), para. 7; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (2010), para. 18; *Report of the Independent Expert on Minority Issues*, Gay McDougall, UN Doc. E/CN.4/2006/74 (2006), para. 28.

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20. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Philippines*, UN Doc. E/C.12/PHL/CO/5-6 (2016), para. 54.
21. <sup>^</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada*, UN Doc. CERD/C/CAN/CO/21-23 (2017), paras. 15, 16(d).
22. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/6 (2019), paras. 46.
23. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Senegal*, UN Doc. E/C.12/SEN/CO/3 (2019), para. 40.
24. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Estonia*, UN Doc. E/C.12/EST/CO/3 (2019), para. 46; Committee on Economic, Social and Cultural Rights, *Concluding Observations Mauritius*, UN Doc. E/C.12/MUS/CO/5 (2019), para. 53(b).
25. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/6 (2019), para. 47; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Estonia*, UN Doc. E/C.12/EST/CO/3 (2019), para. 45(a); Committee on Economic, Social and Cultural Rights, *Concluding Observations Mauritius*, UN Doc. E/C.12/MUS/CO/5 (2019), para. 54(b); see also Global Commission on HIV and the Law, *Risks, Rights and Health: Supplement* (2018), p. 34, rec. 11.
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[NewsID=19852&LangID=E](#); see also United Nations, 'Fight against World Drug Problem Must Address Unjust Impact on People of African Descent, Say UN Rights Experts', 14 March 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>.

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30. <sup>^</sup> *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/68/295 (2013), para. 67; *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, UN Doc. A/HRC/13/39/Add.5 (2010), paras. 231, 257.
31. <sup>^</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965), art. 2(2); Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination*, UN Doc. CERD/C/GC/32 (2009), paras. 7, 11; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 34: Racial Discrimination against People of African Descent*, UN Doc. CERD/C/GC/34 (2011), paras. 7; Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (1989), para. 10; Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009), paras. 8, 9; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (2010), paras. 9, 18, 20, 37(d).
32. <sup>^</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965), art. 1(4); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979), art. 4; Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination*, UN Doc. CERD/C/GC/32 (2009), para. 8; Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (1989), para. 10; Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20 (2009), para. 9; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (2010), paras. 9, 20.
33. <sup>^</sup> UN General Assembly, Resolution S-30/1: *Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), para. 4(b). For specific reference to the need for gender-sensitive service provision and related measures in accordance with standards under the Convention on the Elimination of All Forms of Discrimination against Women, see para. 4(g) of the Resolution.
34. <sup>^</sup> Commission on Narcotic Drugs, Resolution 61/11: *Promoting Non-stigmatizing attitudes to ensure the availability, access and delivery of healthcare and social services for drug users* (2018).
35. <sup>^</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 21; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 25; Protocol to the [European]

Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 9 (1952), art. 3 (right to free elections by secret ballot); American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 23(1); but see American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 23(2) (permitting regulation of right to participate in certain circumstances); African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 13.

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37. [^](#) International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 25; Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), paras. 1, 5, 8, 9, 12.
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40. [^](#) *Report of the Working Group of Experts on People of African Descent: Visit to the United States of America*, UN Doc. A/HRC/15/18 (2010), paras. 47–48, 52.
41. [^](#) Committee on the Elimination of Racial Discrimination, *Concluding Observations: United States of America*, UN Doc. CERD/C/USA/CO/7–9 (2014), paras. 11, 20.
42. [^](#) Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 4.
43. [^](#) Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 11.
44. [^](#) Human Rights Committee, *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para. 14; see also Office of the UN High Commissioner for Human Rights, *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), para. 41.
45. [^](#) Human Rights Committee, *Concluding Observations: Viet Nam*, UN Doc. CCPR/C/VNM/CO/3 (2019), para. 53(d); Human Rights Committee, *Concluding Observations: Lao People's Democratic Republic*, UN Doc. CCPR/C/LAO/CO/1 (2019), para. 37; (2017), paras. 47, 48; Human Rights Committee, *Concluding Observations: Australia*, UN Doc. CCPR/C/AUS/6 (2017), paras. 47, 48; Human Rights Committee, *Concluding Observations: Mongolia*, UN Doc. CCPR/C/MNG/6 (2017), paras. 39, 40; Human Rights Committee, *Concluding Observations: Uzbekistan*, UN Doc. CCPR/C/UZB/CO/4 (2015), para. 26; see also Office of the UN High Commissioner for Human Rights, *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), para. 42.

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52. <sup>^</sup> Office of the UN High Commissioner for Human Rights, *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), paras. 19, 20(c).
53. <sup>^</sup> Office of the UN High Commissioner for Human Rights, *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), paras. 19, 20, 66–68, 79, 101, 105, 107–108.
54. <sup>^</sup> Office of the UN High Commissioner for Human Rights, *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), paras. 19(e, g, h).
55. <sup>^</sup> Sustainable Development Goal 16.7.
56. <sup>^</sup> UN General Assembly, Resolution S-30/1: *Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), preamble, para. 1(q).
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62. <sup>▲</sup> Human Rights Committee, *General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc. CCPR/C/GC/32 (2007), para. 10.
63. <sup>▲</sup> Human Rights Committee, *Guidelines on Measures of Reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/158 (2016), para. 5.
64. <sup>▲</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation on Women's Access to Justice*, UN Doc. CEDAW/C/GC/33 (2015), para. 36.
65. <sup>▲</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation on Women's Access to Justice*, UN Doc. CEDAW/C/GC/33 (2015), para. 37; see also Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35: Gender-Based Violence against Women, Updating General Recommendation No. 19*, UN Doc. CEDAW/C/GC/35 (2017), para. 40(c) (recommending that States ensure free or low-cost, high-quality legal aid to women complainants and witnesses to gender-based violence).
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68. <sup>^</sup> *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1 (2005), principle 32; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Rwanda*, UN Doc. CERD/C/RWA/CO/13-17 (2011), para. 17; Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgement, 15 June 2005, paras. 209–218; *Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation*, International Meeting on Women’s and Girls’ Right to a Remedy and Reparation, Nairobi, 19–21 March 2007, principle 1(D).
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154. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Ecuador*, UN Doc. E/C.12/ECU/CO/4 (2019), para. 48(a); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Kazakhstan*, UN Doc. E/C.12/KAZ/CO/2 (2018), para. 47; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Canada*, UN Doc. CERD/C/CAN/CO/21-23 (2017), para. 16(e); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Canada*, UN Doc. CEDAW/C/CAN/CO/8-9 (2016), para. 49(c); *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Anand Grover, UN Doc. A/HRC/23/41/Add.1 (2013), para. 60(g); *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Dainius Pūras, UN Doc. A/HRC/38/36 (2018), para. 23; *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, Dainius Pūras, UN Doc. A/HRC/32/32 (2016), paras. 99-100; Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the Follow-Up Visit to the Republic of Paraguay from 13 to 15 September 2010*, UN Doc. CAT/OP/PRY/2 (2011), para. 167; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Poland*, UN Doc. E/C.12/POL/CO/6 (2016), para. 54; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Sweden*, UN Doc. E/C.12/SWE/CO/6 (2016), para. 42; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Lithuania*, UN Doc. E/C.12/LTU/CO/2 (2014), para. 21; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Georgia*, UN Doc.

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161. <sup>^</sup> UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), para. 4(e).
162. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), para. 8; see International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 12; Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 25(d); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 7; *Report of the Special Rapporteur on the Rights of Persons with Disabilities*, UN Doc. A/73/161 (2018), paras. 9, 14–15.
163. <sup>^</sup> *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN Doc. A/65/255 (2010), para. 32; *Report of the Special Rapporteur on the Rights of Persons with Disabilities*, UN Doc. A/73/161 (2018), paras. 9, 14–15.
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*Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights*, UN Doc. A/HRC/39/39 (2018), paras. 53–54.

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168. <sup>^</sup> *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/47/40 (2021), para. 83.
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198. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), para. 12(b), n.8. In citing to the right to privacy in the International Covenant on Civil and Political Rights, the Committee on Economic, Social and Cultural Rights states that it gives ‘particular emphasis to access to information because of the special importance of this issue in relation to health’. *Ibid.* According to Manfred Nowak, the right to privacy includes a right of intimacy – that is, ‘to secrecy from the public of private characteristics, actions or data’. This intimacy is ensured by institutional protections but also includes generally recognised obligations of confidentiality, such as that of physicians and priests. Moreover, the ‘protection of intimacy goes beyond publication. Every invasion or even mere exploration of the intimacy sphere against the will of the person concerned may constitute unjustified interference’. M. Nowak, *UN Covenant on Civil and Political Rights: CCPR*

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200. <sup>▲</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 3(4)(c).
201. <sup>▲</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 3(4)(b).
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223. <sup>^</sup> See *Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, David. R. Boyd, UN Doc. A/HRC/40/55 (2019) (right to breathe clean air as a component of right to a healthy environment).
224. <sup>^</sup> See *Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, David. R. Boyd, UN Doc. A/HRC/40/55 (2019), paras. 14, 52.
225. <sup>^</sup> See, e.g., Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), paras. 4, 11, 15, 36, 37, 51.
226. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 12: The Right to Adequate Food*, UN Doc. E/C.12/1999/5 (1999), paras. 4, 10; Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*, UN Doc. E/C.12/2002/11 (2003), paras. 6, 8 10, 12.
227. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water*, UN Doc. E/C.12/2002/11 (2003), paras. 6, 8 10, 12.
228. <sup>^</sup> Committee on the Rights of the Child, *Concluding Observations: Colombia*, UN Doc. CRC/C/COL/CO/3 (2006), para. 72; Committee on the Rights of the Child, *Concluding Observations: Colombia*, UN Doc. CRC/C/COL/CO/4-5 (2015), paras. 49–50.
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230. <sup>^</sup> *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2011), principle 13.
231. <sup>^</sup> *Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1 (2005), principle 32; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Rwanda*, UN Doc. CERD/C/RWA/CO/13-17 (2011), para. 17.
232. <sup>^</sup> African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 24; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6 (2003), arts. 18, 19; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), art. 11(1) ('everyone shall have the right to live in a healthy environment'); Arab Charter on Human Rights (2004), art. 38; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) (1998), art. 1; *Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox, UN Doc. A/73/188 (2018), paras. 29–36; see also *Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, David R. Boyd, UN Doc. A/HRC/40/55 (2019), para

- 16; *ASEAN Human Rights Declaration, 21st ASEAN Summit*, Phnom Penh, 18 November 2012, para. 28(f); Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgement of 15 June 2005, Series C No. 124, paras. 209–218; African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96 (2001), para. 52.
233. <sup>▲</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: South Africa*, E/C.12/ZAF/CO/1, paras. 68–69 (2018); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Colombia*, E/C.12/COL/CO/5, para. 28 (2010); Paul Hunt, oral remarks, 21 September 2007, Bogotá, Colombia; *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen: Mission to Colombia*, UN Doc. E/CN.4/2005/88/Add.2 (2004), paras. 50–52, 82; *Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People: Mission to Ecuador*, UN Doc. A/HRC/4/32/Add.2 (2006), paras. 28, 32; Committee on the Rights of the Child, *Concluding Observations: Colombia*, UN Doc. CRC/C/COL/CO/3 (2006), para. 72; *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, Preliminary Note on the Mission to Ecuador and Colombia*, Addendum, UN Doc. A/HRC/7/11/Add.3 (2007), paras. 17, 20; Office of the UN High Commissioner for Human Rights, 'U.N. Special Rapporteur on the Right to the Highest Attainable Standard of Health, Paul Hunt, Ends Visit to Ecuador', 18 May 2007, <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2304&LangID=E>.
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235. <sup>▲</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: South Africa*, UN Doc. E/C.12/ZAF/CO/1 (2018), paras. 69.
236. <sup>▲</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Argentina*, UN Doc. E/C.12/ARG/CO/4 (2018), para. 69.
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240. <sup>▲</sup> *Report of the Special Rapporteur on the Right to Food, Hilal Elver*, UN Doc. A/HRC/34/48 (2017), para. 107(c).

241. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14(2).
242. <sup>^</sup> UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), para. 4(i).
243. <sup>^</sup> UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), para. 7(g).
244. <sup>^</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 15(1)(b); Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 27; Charter of the Organization of American States (1948), art. 38; American Declaration on the Rights and Duties of Man (1948), art. 13; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), art. 14; Arab Charter on Human Rights (2004), art. 42(1); see also Charter of Fundamental Rights of the European Union, 2012/C 326/02 (2012), art. 13; [European] Convention on Human Rights and Biomedicine, ETS No. 164 (1997), preamble, arts. 2, 28. The right to science is also protected in several national constitutions; see *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed: The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, UN Doc. A/HRC/20/26 (2012), para. 13.
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246. <sup>^</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 15(3).
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250. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 25: Science and Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/25 (2020), para. 67.
251. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 25: Science and Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/25 (2020), para. 67.
252. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 25: Science and Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/25 (2020), para. 67.
253. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 25: Science and Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/25 (2020), para. 68.
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258. <sup>^</sup> *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed*, UN Doc. A/70/279 (2015), para. 103.
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278. <sup>^</sup> UN General Assembly, *Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem*, UN Doc. A/RES/S-30/1 (2016), annex, para. 7(k).
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280. <sup>^</sup> Sustainable Development Goals 1.4 and 5.A.
281. <sup>^</sup> The Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in *This Context, Mission to the United States of America*, UN Doc. A/HRC/13/20/Add.4 (2020), paras. 70–72, 104.
282. <sup>^</sup> The Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in *This Context, Mission to the United States of America*, UN Doc. A/HRC/13/20/Add.4 (2020), paras. 73–74.
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311. <sup>^</sup> Human Rights Committee, *Concluding Observations: Gambia*, UN Doc. CCPR/C/GMB/CO/2 (2018), para. 25; Human Rights Committee, *Concluding Observations: Thailand*, UN Doc. CCPR/CO/84/THA (2005), para. 10; Committee on Economic, Social and Cultural Rights, *Concluding Observations: Philippines*, UN Doc. E/C.12/PHL/CO/5-6 (2016), paras. 53, 54; *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns: Mission to Mexico*, UN Doc. A/HRC/26/36/Add.1 (2014), para. 8; *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Philip Alston* UN Doc. A/HRC/11/2/Add.2 (2009), paras. 33, 53; United Nations, ‘UN Experts Urge Philippines to Stop Attacks and Killings in Anti-Drugs Campaign’, 23 November 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22434&LangID=E>; United Nations, ‘Killings of Suspected “drug offenders” in Bangladesh Must Stop – UN Human Rights Chief’, 6 June 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23178>.

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317. <sup>^</sup> See *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990); UN General Assembly, *Resolution 34/169: Code of Conduct for Law Enforcement Officials*, UN Doc. A/RES/34/169 (1979).
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319. <sup>^</sup> International Narcotics Control Board, *Annual Report 2018* (2019), paras. 326–329, 578, 628, 856; UN Office on Drugs and Crime, ‘Statement by the UNODC Executive Director on the Situation in the Philippines’, 3 August 2016, <https://www.unodc.org/unodc/en/press/releases/2016/August/statement-by-the-unodc-executive-director-on-the-situation-in-the-philippines.html>; International Narcotics Control Board, ‘INCB Condemns Acts of Violence against Persons Suspected of Drug-Related Crime and Drug Use in the Philippines’, 18 August 2017, [https://www.incb.org/incb/en/news/press-releases/2017/press\\_release\\_20170818.html](https://www.incb.org/incb/en/news/press-releases/2017/press_release_20170818.html).
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321. <sup>^</sup> Office of the UN High Commissioner for Human Rights, *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (2017).
322. <sup>^</sup> See, e.g., Human Rights Committee, *Communication No. 470/1991: Kindler v. Canada*, UN Doc. CCPR/C/48/D/470/1991 (1993), para. 13.1–13.2; see also *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (1989), para. 5.
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324. <sup>▲</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 36(2)(a)(4); Convention on Psychotropic Substances, 1019 UNTS 14956 (1971), art. 22(2)(a) (iv), (b); Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 6(8, 10).
325. <sup>▲</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 6(6).
326. <sup>▲</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 36(2)(a)(4); Convention on Psychotropic Substances, 1019 UNTS 14956 (1971), art. 22(2)(a) (iv), (b); Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 6(8, 10).
327. <sup>▲</sup> See, e.g., European Court of Human Rights, *Einhorn v. France*, Application No. 71555/01, 19 July 2001; European Court of Human Rights, *Salem v. Portugal*, Application No. 26844/04, 9 May 2006; European Court of Human Rights, *Babar Ahmad and Others v. United Kingdom*, Application Nos. 24027/07, 11949/08, 36742/08, 24 September 2012; European Court of Human Rights, *Rrapo v. Albania*, Application No. 58555/10, 25 December 2012.
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329. <sup>▲</sup> See, e.g., European Court of Human Rights, *Chahal v. United Kingdom*, Application No. 22414/93, 15 November 1996, para. 105.
330. <sup>▲</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/70/304 (2015), para. 117.
331. <sup>▲</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), paras. 3, 26.
332. <sup>▲</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), paras. 3, 26.
333. <sup>▲</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), paras. 3, 26.
334. <sup>▲</sup> International Narcotics Control Board, *Annual Report 2017* (2018), paras. 20(h), 481.
335. <sup>▲</sup> International Narcotics Control Board, *Annual Report 2017* (2018), paras. 20(h), 481.
336. <sup>▲</sup> International Narcotics Control Board, *Annual Report 2017* (2018), para. 840.
337. <sup>▲</sup> *Canada (Attorney General) v. PHS Community Services Society* [2011] 3 SCR 134 (Canada).
338. <sup>▲</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 6(2).
339. <sup>▲</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), para. 35.
340. <sup>▲</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), para. 35; Human Rights Committee, *Concluding Observations: Viet Nam*, UN Doc. CCPR/C/VNM/CO/3 (2019), para. 23; Human Rights Committee, *Concluding Observations: Lao People's Democratic Republic*, UN Doc. CCPR/C/LAO/CO/1 (2018), para. 17; Human Rights

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342. <sup>^</sup> Human Rights Committee, *General Comment No. 36: The Right to Life*, UN Doc. CCPR/C/GC/36 (2018), para. 35.
343. <sup>^</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 6(5); Convention on the Rights of the Child, G.A. Res. 44/25 (1989), art. 37(a).
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9.2; see also European Court of Human Rights, *Z and Others v. United Kingdom*, Application No. 29392/95, 10 May 2001, para. 73.

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406. <sup>^</sup> *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/22/44 (2012), para. 75; see also International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 9; [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 5; American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 7; African Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 6; Arab Charter on Human Rights (2004), art. 14; Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 9.
407. <sup>^</sup> Human Rights Committee, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CCPR/C/GC/35 (2014), para. 40; *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN Doc. A/HRC/30/37 (2015), paras. 33, 47(a). Under article 5(e) of the European Convention on Human Rights, both alcoholism and drug addiction are listed as legitimate limitations on the right to liberty and security. However, the European Court of Human Rights has never issued a judgement that engages this limitation in the context of drug addiction. The limited jurisprudence on alcohol intoxication suggests a high bar for lawful detention in this context: ‘whether the person concerned behaved, under the influence of alcohol, in such a way that he posed a threat to the public or endangered his own health, well-being or personal safety, and whether detention of the intoxicated person was the last resort to safeguard the individual or the public interest, because less severe measures have been considered and found to be insufficient. When one of these criteria is not fulfilled, the basis for the deprivation of liberty does not exist’. See European Court of Human Rights, *Kharin v. Russia*, Application No. 37345/03, 3 February 2011), para. 34
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409. <sup>^</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 9(3); Human Rights Committee, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CCPR/C/GC/35 (2014), para. 38; *Report of the Working Group on Arbitrary Detention: Visit to Brazil*, UN Doc. A/HRC/27/48/Add.3 (2014), para. 148(b); UN General Assembly, *Resolution 45/110: United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*,

- UN Doc. A/RES/45/110 (1990), rule 6.1; UN General Assembly, *Resolution 65/229: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc. A/RES/65/22 (2011), rule 58.
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415. <sup>^</sup> *Report of the Working Group on Arbitrary Detention: United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN Doc. A/HRC/30/37 (2015), principles 17–21 and guidelines 18–21.
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472. <sup>^</sup> *Report of the Working Group on Arbitrary Detention: Visit to Canada*, UN Doc. E/CN.4/2006/7/Add.2 (2005), para. 57; *Report of the High Commissioner for Human Rights on Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights*, UN Doc. A/HRC/39/39 (2018), paras. 53–54.
473. <sup>^</sup> *Report of the Working Group on Arbitrary Detention: Visit to the People's Republic of China*, UN Doc. E/CN.4/1998/44/Add.2 (1997), paras. 81, 97–99; *Report of the Working Group on Arbitrary Detention: Visit to Brazil*, UN Doc. A/HRC/27/48/Add.3 (2014), paras. 111–119; *Report of the Working Group on Arbitrary Detention: Visit to Malaysia*, UN Doc. A/HRC/16/47/Add.2 (2011), paras. 27, 38–39.
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478. <sup>^</sup> *Single Convention on Narcotic Drugs (as amended by the 1972 Protocol)*, 520 UNTS 7515 (1961), art. 39; *Convention on Psychotropic Substances*, 1019 UNTS 14956 (1971), art. 23.
479. <sup>^</sup> *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1582 UNTS 95 (1988), art. 24.
480. <sup>^</sup> *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1582 UNTS 95 (1988), art. 3(4)(c, d).

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484. <sup>^</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 14(3)(d); [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 6(3)(c); American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 8(2)(d); Arab Charter on Human Rights (2004), art. 16(4); African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 7(c); see also African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), sec. A, para. 2(f), secs. G–J.
485. <sup>^</sup> UN General Assembly, Resolution 67/187: *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN Doc. A/RES/67/187 (2012), annex, para. 20; see also [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 6(3); American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 8(2)(d); African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 7(c); Arab Charter on Human Rights (2004), art. 13.
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489. <sup>^</sup> Human Rights Committee, *General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc. CCPR/C/GC/32 (2007), para. 10.
490. <sup>^</sup> *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, UN Doc. A/HRC/13/39/Add.5 (2010), paras. 104, 106.
491. <sup>^</sup> UN General Assembly, *Resolution 67/187: United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN Doc. A/RES/67/187 (2012), annex, paras. 20, 32.
492. <sup>^</sup> See International Court of Justice, *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgement of 31 March 2004.
493. <sup>^</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 14(2); [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 6(2); American Convention on Human Rights, O.A.S. Treaty Series No. 36

- (1969), art. 8(2); Arab Charter on Human Rights (2004), art. 16; African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5 (1981), art. 7(1)(b).
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497. <sup>^</sup> Human Rights Committee, *General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc. CCPR/C/GC/32 (2007), para. 41; see also Human Rights Committee, *Concluding Observations: Nepal*, UN Doc. CCPR/C/NPL/CO/2 (2007), para. 16; Human Rights Committee, *Concluding Observations: France*, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 14.
498. <sup>^</sup> UN General Assembly, *Resolution 67/187: United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, UN Doc. A/RES/67/187 (2012), annex, para. 43(a).
499. <sup>^</sup> *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/47/40 (2021), paras. 33–34. see, e.g., the Special Criminal Court in the Republic of Ireland, a juryless court with restricted rules of evidence with a remit to try organised crime and drugs cases. Irish Council for Civil Liberties, 'Special Criminal Court Decision "Flouts Rule of Law" says ICCL', 29 October 2015, [https://www.iccl.ie/press-release/special-criminal-court-decision-flouts-rule-of-law-says-iccl/#:~:text=Ireland's%20independent%20human%20rights%20watchdog,peacetime%20is%20a%20violation%20of](https://www.iccl.ie/press-release/special-criminal-court-decision-flouts-rule-of-law-says-iccl/#:~:text=Ireland's%20independent%20human%20rights%20watchdog,peacetime%20is%20a%20violation%20of;); see also the Revolutionary Courts in Iran, which try drug trafficking cases and even issue death sentences. Iran Human Rights and Together against the Death Penalty, *Annual Report on the Death Penalty in Iran, 2017* (2018), pp. 5, 12.
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502. <sup>^</sup> Human Rights Committee, *General Comment No. 32: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc. CCPR/C/GC/32 (2007), para. 22.
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*Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights*, UN Doc. A/HRC/39/39 (2018), paras. 53–54.

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519. <sup>▲</sup> European Court of Human Rights, *Othman v. United Kingdom*, Application No. 8139/09, 12 January 2012, paras. 259, 263, 267.
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522. <sup>▲</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 12; International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 17; American Convention on Human Rights, O.A.S. Treaty Series No. 36 (1969), art. 11; [European] Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (1950), art. 8; Arab Charter on Human Rights (2004), art. 21.
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574. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14(2).
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808. <sup>^</sup> UN General Assembly, *Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc. A/RES/61/295 (2007), art. 29.
809. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of Everyone to Take Part in Cultural Life*, UN Doc. E/C.12/GC/21 (2009), para. 36; UN General



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816. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14(2).
817. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14.
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839. <sup>^</sup> Constitution of Bolivia (2009), arts. 30(II)(2), 384; Constitution of Ecuador (2008), art. 57; Constitution of Peru (1993), art. 89; Constitution of Venezuela (1999), art. 121; Constitution of Argentina (1994), art. 75(17).
840. <sup>^</sup> Chile, Law No. 19253 (1993), art. 7.

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842. <sup>^</sup> See, e.g., Argentina, Law No. 23737 (1989), art. 15.
843. <sup>^</sup> See United States, American Indian Religious Freedom Act Amendments of 1994; *Report of the UN High Commissioner for Human Rights: Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights*, UN Doc. A/HRC/30/65 (2015), para. 60.
844. <sup>^</sup> *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: The Situation of Indigenous Peoples in the United States of America*, UN Doc. A/HRC/21/47/Add.1 (2012), appendix II, para. 101.
845. <sup>^</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 49(2)(d–g).
846. <sup>^</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 4(c).
847. <sup>^</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 4(c).
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850. <sup>^</sup> *Permanent Forum on Indigenous Issues: Report on the Eighth Session*, UN Doc. E/2009/43–E/C.19/2009/14 (2009), para. 89.
851. <sup>^</sup> The reservation reads as follows: ‘The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes, such as its use in infusions; and also, the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes. At the same time, the Plurinational State of Bolivia will continue to take all necessary measures to control the cultivation of coca in order to prevent its abuse and the illicit production of the narcotic drugs which may be extracted from the leaf’. See United Nations Treaty Collection, ‘Declarations and Reservations: Bolivia’, [https://treaties.un.org/Pages/Declarations.aspx?index=Bolivia%20\(Plurinational%20State%20of\)&lang=\\_en&chapter=6&treaty=170](https://treaties.un.org/Pages/Declarations.aspx?index=Bolivia%20(Plurinational%20State%20of)&lang=_en&chapter=6&treaty=170).
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857. <sup>^</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), art. 4(c).
858. <sup>^</sup> See Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14(2); Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), arts. 4(c), 49(2).
859. <sup>^</sup> Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 520 UNTS 7515 (1961), arts. 22(2), 26(2).
860. <sup>^</sup> See, e.g., Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 31; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Former Yugoslav Republic of Macedonia*, UN Doc. CEDAW/C/MKD/CO/4-5 (2013); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Republic of Italy*, UN Doc. CEDAW/C/ITA/CO/6 (2011); Committee on the Rights of the Child, *Concluding Observations: Kuwait*, UN Doc. CRC/C/KWT/CO/2 (2013); Committee on the Rights of the Child, *Concluding Observations: Madagascar*, UN Doc. CRC/C/MDG/CO/3-4 (2012); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Germany*, UN Doc. E/C.12/DEU/CO/5 (2011); Committee on Economic, Social and Cultural Rights, *Concluding Observations: Monaco*, UN Doc. E/C.12/MCO/CO/2-3 (2014).
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867. <sup>▲</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kazakhstan*, UN Doc. CEDAW/C/KAZ/CO/3-4 (2014), para. 30; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Macedonia*, UN Doc. CEDAW/C/MKD/CO/4-5 (2013), para. 34.
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887. <sup>▲</sup> Charter of the United Nations, 1 UNTS XVI (1945), arts. 1(3), 55, 56; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 2(1), 11, 22, 23; Convention on the Rights of the Child, G.A. Res. 44/25 (1989), art. 4; Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006), art. 32; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Cameroon*, UN Doc. CEDAW/C/CMR/CO/4-5 (2014) para. 48; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Tanzania*, UN Doc. CEDAW/C/TZA/CO/6 (2008), para. 59; Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations*, UN Doc. E/1991/23 (1990), para. 14; see also *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (2011), principle 13.
888. <sup>▲</sup> Charter of the United Nations, 1 UNTS XVI (1945), arts. 55, 56; see also Committee on Economic, Social and Cultural Rights, *General Comment No. 2: International Technical Assistance Measures*, UN Doc. E/1990/23 (1990); Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties' Obligations*, UN Doc. E/1991/23 (1990); Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 2(1); Convention on the Rights of the Child, G.A. Res. 44/25 (1989), art. 4; *Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, The Right to Enjoy the Benefits of Scientific Progress and Its Applications*, UN Doc. A/HRC/20/26 (2012), para. 68.

889. <sup>^</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 2: International Technical Assistance Measures*, UN Doc. E/1990/23 (1990), paras. 2, 5, 6.
890. <sup>^</sup> Committee on the Rights of the Child, *Concluding Observations: Sierra Leone*, UN Doc. CRC/C/15/Add.116 (2000), para. 84.
891. <sup>^</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations: Honduras*, UN Doc. CEDAW/C/HND/CO/7-8 (2016), para. 45.
892. <sup>^</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/67/275 (2012), paras. 84, 128; *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/70/304 (2015), paras. 102–107.
893. <sup>^</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/70/304 (2015), para. 117.
894. <sup>^</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/67/275 (2012), paras. 84, 128; *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, UN Doc. A/70/304 (2015), para. 107.
895. <sup>^</sup> *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/47/40 (2021), para. 126(p).
896. <sup>^</sup> UN Office on Drugs and Crime, *UNODC and the Promotion and Protection of Human Rights: Position Paper* (2012).
897. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 14(3).
898. <sup>^</sup> *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988 (1998), p. 302, para. 14.18.
899. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 6.
900. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 7.
901. <sup>^</sup> Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988), art. 9.
902. <sup>^</sup> Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1980), art. 31(1).
903. <sup>^</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.682 (2006), para. 37; International Court of Justice, *Case concerning the Right of Passage over Indian Territory (Portugal v. India)*, Preliminary Objections, 26 November 1957, p. 142.
904. <sup>^</sup> European Court of Human Rights, *Nada v. Switzerland*, Application No. 10593/08, 12 September 2012, para. 170.
905. <sup>^</sup> C. Wilfred Jenks, 'The Conflict of Law-Making Treaties', *British Yearbook of International Law*, vol. 30 (1953), p. 426.

906. <sup>^</sup> Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1980), arts. 31–33.
907. <sup>^</sup> See, e.g., European Court of Human Rights, *Golder v. United Kingdom*, Application No. 4451/70, 21 February 1975, paras. 29–30; European Court of Human Rights, *Witold Litwa v. Poland*, Application No. 26629/95, 4 April 2000, paras. 57–64; *Johnston and Others v. Ireland* (1986) Series A No. 112, para. 51; *Lithgow and Others v. the United Kingdom* (1986) Series A No. 102, paras. 47–48.
908. <sup>^</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.682 (2006), para. 427.
909. <sup>^</sup> International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.682 (2006), para. 37.
910. <sup>^</sup> European Court of Human Rights, *Nada v. Switzerland*, Application No. 10593/08, 12 September 2012, para. 170.
911. <sup>^</sup> See, e.g., *Edith Yunita Sianturi, Rani Andriani (Melisa Aprilia), Myuran Sukumaran, Andrew Chan, Scott Anthony Rush*, Indonesian Constitutional Court, [2007] 2-3/PUU-V/2007 IDCC 16; *Indian Harm Reduction Network v. Union of India and Ors*, Supreme Court of India, Special Leave Petition (Criminal) No 114 of 2012, ‘Affidavit in Reply on behalf of Respondent No. 1&2’, 11 November 2013, para. 4(v).
912. <sup>^</sup> International Law Commission, *Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (2006), para. 4.
913. <sup>^</sup> See generally *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1984/4 (1984); see also International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 4(2); International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 4; Human Rights Committee, *General Comment No. 29: States of Emergency*, UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 13(b); Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to Health*, UN Doc. E/C.12/2000/4 (2000), paras. 28, 29.
914. <sup>^</sup> See Guideline II.10.
915. <sup>^</sup> See Guideline II.12.
916. <sup>^</sup> See Guideline II.13.
917. <sup>^</sup> See Guideline II.13.
918. <sup>^</sup> Where such limited derogations are permissible, States must also comply with all the substantive and procedural requirements of the applicable derogation regime if provided for in the international or regional treaty in question. Not all treaties make such provision.
919. <sup>^</sup> *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, UN Doc. E/CN.4/1984/4 (1984).