



International Centre
on Human Rights
and Drug Policy



*Empowered lives.
Resilient nations.*

International
GUIDELINES on
HUMAN RIGHTS
and **DRUG POLICY**

March 2019

The views expressed in this publication do not necessarily represent those of the United Nations, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP), the World Health Organization (WHO), or their Member States.

The guidelines 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. 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.

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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’.¹ 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.² 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.³ 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.

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

1 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).

2 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.

3 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).

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

1.4. Human rights, health, and the 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.

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.

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.

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.

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.

6. Freedom from torture and other 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.

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 may 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.

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.

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.

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.

11. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

4. Indigenous peoples

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.

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.

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.

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.

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.

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.

3. Obligation of international cooperation and assistance

States have an obligation to take steps to ensure that all measures of international cooperation and assistance to counter the illicit drug trade do not directly or indirectly undermine the promotion or protection of human rights.

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.

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'. Where there appears to be incompatibility, the principles of treaty interpretation emphasise the strong presumption against normative conflict in international law.
- 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, 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.

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.

ANNEX I: THEMATIC REFERENCE GUIDES: DEVELOPMENT, CRIMINAL JUSTICE, AND HEALTH

The International Guidelines on Human Rights and Drug Policy 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, this annex offers three thematic reference guides (development, criminal justice, and health) that pinpoint the most relevant guidelines for each of these issue areas.

Below are the three reference guides for each theme. However, each thematic section, including its full text, commentary, and supporting references, is being compiled online and will be available at www.humanrights-drugpolicy.org/themes

DEVELOPMENT

Foundational human rights principles

- Section I (dignity, universality, equality, participation, and accountability)

Criminal justice and development

- Guideline III.1.4 (protection of children from exploitation in the illicit drug trade)
 - » Non-criminalisation of children exploited in the drug trade
- See also Criminal Justice reference index

Health and development

- Guideline II.1 (right to health)
 - » Attention to social determinants of health and equity as part of the right to health
- Guideline II.1.4 (human rights and a healthy environment)
 - » Deforestation and degradation of natural habitats
 - » Environmental harms caused by crop eradication and use of herbicides and pesticides; prohibition of aerial spraying
 - » Environmental impact assessments
- See also Health reference index

Poverty and sustainable livelihoods

- Guidelines II.2 (right to benefit from scientific progress and its applications)
 - » Evidence-informed development responses to the illicit drug trade
- Guideline II.3 (right to an adequate standard of living)
 - » Sustainable alternative livelihoods
 - » Sequencing interventions
 - » Crop eradication
 - » Land tenure
 - » Protections against discriminatory evictions
- Guideline II.4 (right to social security)
 - » Denial of social assistance based on dependence on illicit drug economies
 - » Legal entitlements to universal access to health care, housing, education, and basic income security
 - » International cooperation to facilitate right to social security
- Guideline III.1.4 (protection of children from exploitation in the illicit drug trade)
 - » Addressing poverty, marginalisation, and other roots causes of involvement in drug trade
- Guideline III.2.2 (women, drug-related offences, and dependence on illicit economies)
 - » Sustainable, gender-sensitive alternative development
- Guideline III.2.3 (women and illicit drug cultivation)
 - » Participation of women in decision making and equal rights to benefit from alternative livelihood efforts

Gender and development

- Guideline III.2.2 (women, drug-related offences, and dependence on illicit economies)
 - » Sustainable, gender-sensitive alternative development
- Guideline III.2.3 (women and illicit drug cultivation)
 - » Participation of women in decision making and equal rights to benefit from alternative livelihood efforts

Indigenous peoples and development

- Guideline III.4.1 (rights to self-determination; to lands, territories, and resources; and to conservation of lands)
 - » Avoiding violations of right to subsistence in drug control efforts
 - » Right to use, develop, and control lands
 - » Prevention and redress for environmental harms affecting indigenous peoples
- Guideline III.4.2 (free, prior, and informed consent)
 - » Good-faith consultation
- Guideline II.4.3 (rights to enjoy culture and to profess and practice religion)
 - » Protection from private companies and other third parties

Implementation

- Section IV (data collection, human rights review and budget analysis, and international assistance)
 - » Guideline IV.3 (international cooperation to develop and support sustainable alternative livelihoods)

CRIMINAL JUSTICE

Foundational human rights principles

- Section I (dignity, universality, equality, participation, and accountability)

Policing and investigation

- Guideline II.5 (right to life)
 - » Use of force, including extrajudicial executions; prevent, investigate, and prosecute violence perpetrated by non-State actors
- Guideline II.9.ii (right to privacy)

Arrest and interrogation

- Guideline II.6 (freedom from torture and other cruel, inhuman or degrading treatment or punishment)
 - » Confession and forced withdrawal from opioids
 - » Evidence retrieval upon arrest
- Guideline II.7 (freedom from arbitrary arrest and detention)
 - » Detention based solely on drug use or dependence
 - » Diversion from prosecution
 - » Pretrial detention
- Guideline II.8 (right to a fair trial)
 - » Right to access legal counsel
- Guidelines III.1.i (children and prevention)
 - » Random drug testing, strip searches, sniffer dog

Trial and due process

- Guideline II.8 (right to a fair trial)
 - » Military courts, specialty courts, and access to legal counsel
- Guideline III.1.2 (interventions for children who use drugs)
- Guideline III.2.2 (women, drug-related offences, and dependence on illicit economies)
 - » Diversion from criminal justice system

Sentencing

- Guideline II.5 (right to life)
 - » Death penalty
- Guidelines II.6 (freedom from torture and other cruel, inhuman, or degrading treatment or punishment)
 - » Corporal punishment
- Guideline II.7 (freedom from arbitrary arrest and detention)
 - » Non-custodial, alternative measures
- Guideline III.1.2 (interventions for children who use drugs)
 - » Decriminalisation of minors for drug use or drug possession for personal use
 - » Adherence to international juvenile justice standards
- Guideline III.2.2 (women, drug-related offences, and dependence on illicit economies)
 - » Mitigating factors in sentencing (caretaking responsibilities, lack of criminal history, level of severity of crime)
 - » Transfer of non-resident foreign-national women prisoners

Prison conditions

- Guideline II.6 (freedom from torture and other cruel, inhuman, or degrading treatment or punishment)
 - » Access to health care equivalent to that available in the community
- Section III.3 (persons deprived of liberty)
 - » Adherence to international standards on persons deprived of liberty
 - » Principle of equivalence for prison health care
- Guideline III.2.2 (women, drug-related offences, and dependence on illicit economies)
 - » Adherence to international standards on women deprived of liberty
- Guideline III.3.ii
 - » Adherence to international standards for children deprived of liberty

Post-prison and transition

- Guideline II.5.vi (right to life)
 - » Access to harm reduction services to protect life upon exit from incarceration
- Guideline III.3 (persons deprived of liberty)
 - » Access to harm reduction, drug treatment services, and essential medicines in detention and on entry, exit, and transfers between institutions

Extradition

- Guideline II.5 (right to life)
- Guideline II.6 (freedom from torture and other cruel, inhuman, or degrading treatment or punishment)
- Guideline II.8 (right to a fair trial)
 - » Death penalty, torture, fair trial in requesting state

Legal and policy frameworks

- Guideline II.1 (right to health)
- Guideline II.9 (right to privacy)
- Guideline II.10 (freedom of thought, conscience, and religion)
- Guideline III.1.2 (interventions for children who use drugs)
- Guideline III.4.4 (indigenous peoples' right to traditional medicines and health practices)
 - » Decriminalisation of personal use, possession, and cultivation
- Guideline II.12 (freedom of opinion, expression, and information)
 - » Seek, receive, and impart accurate, objective information about drugs and drug policy
- Guideline II.13 (freedom of association and peaceful assembly)
 - » Association and peaceful assembly to express views and advocate regarding drug laws, policies, practices, and related reforms
 - » Form and join organisations advocating on drug laws, policies, practices
 - » Receipt of financial support from domestic, foreign, and international sources
- Guideline IV.3 (international cooperation)
 - » Standards for provision of financial and technical assistance for judicial and law enforcement cooperation and for demand reduction efforts

Implementation

- Section IV (data collection, human rights review and budget analysis, and international assistance)

Foundational human rights principles

- Section I (dignity, universality, equality, participation, and accountability)

Social and economic determinants of health

- Guideline I.3 (equality and non-discrimination)
- Guideline II.1.ii (attention to social determinants of health as part of the right to health)
 - » Social stigma
- Guideline II.1.4 (human rights and healthy environment)
 - » Crop eradication methods
- Guideline II.3 (adequate standard of living)
 - » Food, clothing, and housing
- Guideline II.4 (social security)
- No denial of social assistance due to drug use or dependence
- See also Development and Criminal Justice reference indexes

Prevention

- Guideline II.5 (right to life)
 - » Positive measures to increase life expectancy, including evidence-based prevention measures
- Guideline III.1.1 (children and prevention)
 - » Access to information about drugs and drug-related harm
 - » Accurate and objective information
 - » Evidence-based prevention, including in schools
 - » Avoidance of school drug testing, sniffer dogs, and strip searches

Drug dependence treatment and harm reduction

- Guideline II.1 (right to health)
 - » Guideline II.1.1 (harm reduction)
 - » Guideline II.1.2 (drug dependence treatment)
- Guideline II.5.vi (right to life)
 - » Positive measures to improve life expectancy
- Guideline II.6 (freedom from torture)
 - » Access to essential medicines for drug dependence and access to opioid substitution therapy
 - » Access to health care in detention equivalent to that in community
 - » Monitoring drug dependence treatment practices
- Guideline II.7 (freedom from arbitrary arrest and detention)
 - » Treatment as an alternative to incarceration
- Guideline II.9 (right to privacy)
 - » Disclosure of confidential information about drug use and drug treatment
 - » Access to social welfare benefits
- Guideline II.12 (freedom of opinion, expression, and information)
 - » Access to scientific, health-related information about drugs, drug use, drug-related harms, and prevention and reduction of such harms
- Guideline III.1.2 (interventions for children who use drugs)
 - » Child-sensitive drug dependence treatment
- Guideline III.2.1 (interventions for women who use drugs)
 - » Gender-sensitive prevention, drug treatment, harm reduction, and sexual and reproductive health services
 - » Drug use and dependency and right to family life
 - » Detention and punishment based on drug use during pregnancy
 - » Violence against women who use drugs
- Guideline III.3 (persons deprived of liberty)
 - » Access to harm reduction, drug treatment services, and essential medicines in detention and on entry, exit, and transfers between institutions
 - » Training of health care professionals and prison staff on harm reduction, drug treatment services, palliative care, and pain treatment

Access to controlled medicines

- Guideline II.1.3 (access to controlled substances as medicines)
 - » Access to essential medicines as a core minimum requirement of the right to health, including paediatric formulations
 - » Avoiding undue regulatory restrictions
 - » Following international scheduling procedures
 - » Medical and service provider training
- Guideline II.6 (freedom from torture and other cruel, inhuman, or degrading treatment or punishment)
 - » No denial of controlled medicines for pain control
 - » Access to controlled medicines for pain control
 - » Standards of health care in prisons equivalent to those in the community, including access to controlled medicines for pain control and drug dependence treatment

Traditional medicinal use of controlled plants

- Guideline III.4.4 (right to traditional medicines and health practices)
 - » Decriminalisation of indigenous peoples' possession, purchase, and cultivation of controlled psychoactive substances for traditional medical purposes

Health related to crop eradication

- See Development reference index

Implementation

- Section IV (data collection, human rights review and budget analysis, and international assistance)

ANNEX II: METHODOLOGY

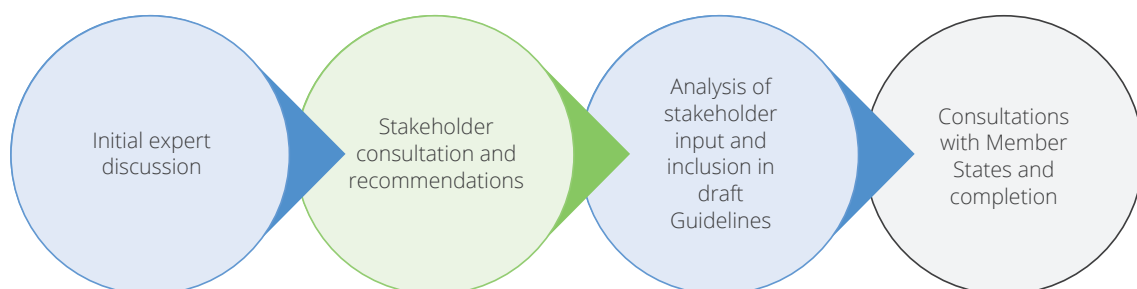
The United Nations Development Programme and the International Centre on Human Rights and Drug Policy at the University of Essex jointly led the development of the International Guidelines on Human Rights and Drug Policy. The Canadian HIV/AIDS Legal Network and Harm Reduction International provided additional support and expertise throughout the drafting and consultative process. The Guidelines are the product of extensive legal research, expert review, and an inclusive multi-stakeholder process at the international and regional levels with cross-regional participation. They are also informed by the global experience of UNDP in following up with the Recommendations of the Global Commission on HIV and the Law – an independent body of eminent experts to which UNDP served as the Secretariat. Specific efforts were made to engage with those communities most adversely affected by international drug control efforts, including people who use drugs, farmers who cultivate illicit crops, and communities negatively affected by the illicit drug trade.

Legal research: These Guidelines are based on doctrinal legal research drawing on international, regional, and national hard law and soft law sources from multiple thematic areas. An in-depth review of the three international drug control conventions, including each official commentary, was undertaken. In addition, targeted research of international human rights instruments and mechanisms was conducted with respect to both treaty-based mechanisms and UN Charter-based mechanisms. Sources in this regard include the concluding observations and general comments of each treaty body for the core UN human rights treaties, as well as the work of relevant thematic Special Procedures of the Human Rights Council. Resolutions of the General Assembly, the Economic and Social Council, the Human Rights Council, and the Commission on Narcotic Drugs were also studied. The research also drew on scholarly works on key legal issues and on guidance documents issued by UN and regional bodies. Additional international instruments and expert mechanisms reviewed included the International Labour Organization conventions related to child labour, HIV/AIDS, and indigenous peoples; the UNESCO conventions and declarations on cultural heritage; and the reports of United Nations Permanent Forum on Indigenous Issues. Where relevant, or where particular lacunae were identified at the international level, regional human rights treaties and jurisprudence from regional human rights courts and national courts was also cited. Thematic keyword searches were developed in consultation with the Guidelines' drafting committee to target searches and filter the extensive material that was gathered. While there was no date range for inclusion, more recent findings of legal mechanisms (i.e., those post-2000) were preferred for referencing in the Guidelines.

A group of experts developed several background papers that framed some of the key thematic issues and helped inform various aspects of the Guidelines. Likewise, individuals from the core editorial team working on the Guidelines provided an overarching framing paper establishing the case for international guidelines on human rights and drug policy. This work was peer reviewed and published in a special section on human rights and drug control in the June 2017 issue of Harvard University's *Health and Human Rights Journal*.⁴

Expert review: A team of legal scholars and practitioners was commissioned to peer review drafts of the Guidelines. This team comprised experts on a range of issues, including child rights, criminal law, development and human rights, health and human rights, indigenous rights, international drug control, public international law, and women's rights. The comments and insights provided by this team were used to amend subsequent drafts and to guide key substantive and structural issues.

Consultations: From 2016 to 2018, a series of multi-stakeholder consultations were convened across five continents to inform the Guidelines at various stages in their development. These consultations included the participation of members of government; representatives of UN and regional health, human rights, and drug control entities; civil society actors; independent experts; and scholars. Two initial expert gatherings were convened in 2016 in New York and at the University of Essex to identify the scope and format of the Guidelines, as well as their drafting process. After these framing consultations, a zero draft was presented at a global consultation in June 2017 in Bogotá, Colombia. Present at this meeting were UN Member States, UN agencies, UN independent experts, affected community representatives, and academic experts. A fourth gathering was convened in September 2017 to review and consolidate the inputs from the global consultation. This led to the production of a new draft that was subsequently submitted for feedback to a team of commissioned experts. After these experts' feedback was incorporated into the draft, three more global consultations were held in 2018 in Pretoria, South Africa; Bangkok, Thailand; and Amsterdam, the Netherlands. The Amsterdam meeting was a community consultation for people who use drugs. Additionally, two Member State meetings were hosted in Vienna, Austria, during the convenings of the Commission on Narcotic Drugs. Following these meetings, a final expert workshop was convened at the University of Essex in November 2018 to analyse and incorporate the input gathered. A final draft was submitted to a team of international legal scholars and other subject-matter experts for their review.



⁴ *Health and Human Rights Journal*, vol. 19, no. 1 (2017), pp. 231–278.

These Guidelines were produced with 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.



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