

## IDPC comments on the outline of the CESCR General Comment on drug policy

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The [International Drug Policy Consortium](#) (IDPC) is a global network of over 190 NGOs coming together to promote drug policies grounded in social justice and human rights. IDPC welcomes the initiative by the UN Committee on Economic, Social and Cultural Rights (CESCR) to draft a General Comment on the impacts of drug policy on economic, social and cultural rights. Below are some comments we wish to share with members of the CESCR regarding the [proposed outline](#) of the General Comment. We also recommend consulting IDPC's report, '[Off track: Shadow Report for the Midterm Review of the 2019 Ministerial Declaration on drugs](#)', which collates and analyses the latest international data on global drug policy and its impacts on health and human rights, which touches upon all the issues highlighted in our contribution below.

We welcome the call for **alternatives to criminalisation, addressing the manifest racial and class-based discrimination in the enforcement of drug laws** (text box, p.1). However, this should also seek to address the disproportionate impacts of punitive drug policies, criminalisation and incarceration on women and the LGBTQI+ community. There is also a need to question existing 'alternatives' to incarceration which perpetuate cycles of punishment and marginalisation. Relevant reports include the following:

- WOLA, IDPC, Dejusticia, et al, 2023, [Justice Is Setting Them Free: Women, Drug Policies, and Incarceration in Latin America](#)
- WHRIN, [Women who use drugs: Intersecting injustice and opportunity](#)

When enumerating the **UN entities that are involved in shaping and implementing international drug policy** (p.1.), we recommend that there is a reference to the guiding role of the UN system Common Position on drugs on shaping drug policy by UN agencies. The Common Position was adopted by the UN Chief Executives Board in 2018 and lays down the overarching policy framework for all UN bodies involved in drug policy, with explicit references to human rights, decriminalisation of drug use and possession for personal use, and health and harm reduction. The Common Position represents the high mark for efforts to bring coherence to approaches to drugs across the UN system under human rights principles, and as such it should also be cited in the section on **international cooperation**. The Common Position is particularly important given the historical reticence by the UN Office on Drugs and Crime to integrate human rights in its work. Relevant documents include the following:

- UN Chief Executives Board (2018), [UN system Common Position on Drugs](#).
- UN Task Team for the implementation of the common position on drugs (2019), [What we have learned over the last 10 years: A summary of knowledge acquired and produced by the UN system on drug related matters](#).
- IDPC (2022), [Converging universes: 20 years of human rights and drug policy at the United Nations system](#)

We also welcome the call for ‘**participation, consultation, transparency**’ (p. 2). In addition to the key groups already mentioned, we would encourage the CESCR General Comment to also add youth, as well as people deprived or formerly deprived of their liberty (one in five people in prison are currently deprived of their liberty for drug offences, a proportion that reaches 35% globally for women). Relevant reports include the following:

- On youth involvement: Drug Reporter, 2020, [Young People in Drug Policy Advocacy Part 1: Stop “Protecting” Young People From Drugs and Start Listening to Them](#)
- On people deprived of their liberty: IDPC, et al, 2020, [Punitive drug laws: 10 years undermining the Bangkok Rules](#); WOLA, 2020, [Women Behind Bars for Drug Offenses in Latin America: What the Numbers Make Clear](#)

Regarding ‘**non-discrimination, equality, and groups or persons requiring particular attention**’ (p. 3): there is also an urgent need to focus on children and young people. Traditionally, governments’ efforts around children and young people have focused almost exclusively on preventing drug use, without paying due attention to other aspects of drug policy, or the harms associated with punitive drug control on the rights of children and youth. This includes children being separated from their parents due to incarceration, spending their early years in prison with their mothers, growing up within communities subjected to intense street-level policing or gang violence, or affected by parents’ criminal records that scar the entire family and impacts on their right to safe housing, access to education and to an adequate standard of living. This also includes children randomly tested for drugs at school, subjected to strip searches and sniffer dogs, being pulled unnecessarily into the criminal justice system or forced into drug treatment, and being denied access to age-sensitive harm reduction and treatment services, undermining their right to health. This also means that the economic, social and cultural rights affected by drug laws listed in p. 2 of the annotated outline **should include the right to education (Article 13 ICESCR)**, given that sanctions relating to drug use and drug possession in schools are a major contributor to children’s exclusion from the education system. Relevant reports include the following:

- Open Society Foundations, 2015, [The impacts of drug policies on children and young people](#)
- [Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), 2016, A/HRC/32/32, para 101-102
- Office of the High Commissioner on Human Rights, 2015, [Study on the impact of the world drug problem on the enjoyment of human rights](#), A/HRC/30/65, para. 50

The list of ICESCR rights engaged by drug laws should also include **the right to family life** under article 10 ICESCR. Although this dimension has been historically neglected, civil society has documented a broad range of drug policies that effectively separate parents (particularly mothers) who use drugs from their children, without taking into consideration the best interest of the children. These decisions are often taken on the basis of a deeply stigmatizing approach to drug use, which assumes that any person (particularly women) who uses drugs is unfit to be a parent. States should review policies that equate drug use by parents with child maltreatment and ensure instead that each case is reviewed on an individual basis for the best interest of the child. Draconian prison sentencing for low-level drug offences also have a disproportionate impact on women, and as such can have devastating effects for children whose parents (particularly mothers) are sentenced to prison. Relevant reports include the following:

- See reports on separations of children from parents who use drugs in the report summarizing the civil society consultation on ESC rights and drug policy that took place at the margins of the UN Commission on Narcotic Drugs in March 2023.
- CWS (2018). [Childhood that matters: The impact of drug policy in children whose parents are incarcerated in Latin America and the Caribbean](#)

Within the ‘**Obligation to respect**’ (p. 4): it is critical to highlight the importance of community engagement and empowerment in the provision of life-saving health and social services, as has been recommended by networks of people who use drugs across the world. The work of communities and peer-to-peer support should be recognised, respected and protected by governments worldwide, and this should feature prominently in the General Comment. Relevant reports include the following:

- INPUD, [IDUIT Brief Guide for People Who Use Drugs](#)
- INPUD et al, [Nothing about us without us: A manifesto by people who use illegal drugs](#)

With regards to **the ‘obligation to respect’ in the context of the right to cultural life** (p. 4), the annotated outcome should recognise that the prohibition on cannabis, coca leaf, and opium use imposed by the 1961 Single Convention on Drugs has historically had a detrimental impact on cultural, religious and sacramental practices, not only of Indigenous peoples, but also in a broad range of other traditions - in the case of cannabis, the most clear examples are traditional cannabis uses in Hindu, Rastafarian, and Sufi cultures. In fact, the right to cultural life has been at the heart of a number of initiatives to decriminalise or legally regulate cannabis. For instance, In Jamaica the Dangerous Drugs (Amendment) Act 2015 recognised the rights of Rastafarians to use cannabis for sacramental purposes; in Antigua and Barbuda, the Cannabis Bill 2018 provides for the legal cultivation of cannabis ‘by a religious body’; and In 2019 the Eastern Caribbean Supreme Court moved to decriminalise the personal use of cannabis in St Kitts and Nevis, on the basis that total prohibition of cannabis was a limitation to the right to freedom of conscience of all Rastafarian adults. For a summary see:

- IDPC (2021), [On the right to freedom of thought, cognitive liberty, and the global drug control regime.](#)

Within the ‘**Obligation to protect**’ (p. 4): it is important to highlight how policies focusing on eradication and interdiction in areas used to cultivate internationally controlled plants such as coca, cannabis and opium, have undermined the right to work and to an adequate standard of living, pushing affected communities into cycles of poverty and marginalisation. This is particularly the case for women involved in illegal crop cultivation, who suffer from a triple stigma for being women, living in rural areas, and engaged in illegal activities. Similarly, most women incarcerated for drug offences in Latin America and Asia are in situations of high vulnerability, often being single mothers and heads of household, with limited access to formal education and employment. Their incarceration for their involvement in drug-related activities does little more than to exacerbate cycles of poverty, vulnerability, stigma and discrimination. In order to redress the harms of punitive and militarised drug control efforts, the Office of the High Commissioner for Human Rights encouraged UN Member States to consider the responsible regulation of all drugs. We urge the CESCR, in its general comment, to do the same. Relevant reports include the following:

- United Nations Development Programme, 2019, [Development dimensions of drug policy: Innovative approaches](#)
- GIZ & Open Society Foundations (2019), [Raising voices: Empowering female farmers in drug crop cultivation areas](#)
- OHCHR, 2023, [Human rights challenges in addressing and countering all aspects of the world drug problem](#), A/HRC/54/53
- IDPC, 2023, [Moving beyond prohibition and towards a human rights-based approach to drugs: IDPC submission to OHCHR](#)
- IDPC, et al, 2020, [Punitive drug laws: 10 years undermining the Bangkok Rules](#)

Within the ‘**obligation to fulfill**’ (p. 4): One of the major barriers in access to harm reduction and treatment services is the ongoing criminalisation of people who use drugs. The UN System Common Position on drugs and the UN System Common Position on incarceration, a large number of UN and regional bodies, as well as the CESCR itself, have called for the decriminalisation of people who use drugs - i.e. removing all criminal sanctions and other forms of punishment for drug use and related activities. We call on the CESCR to prominently include this key recommendation in its general comment. Relevant reports include the following:

- CESCR, 2022, [Committee on Economic, Social and Cultural Rights Concludes Seventy-Second Session after Adopting Concluding Observations on Reports of El Salvador, Mongolia, Italy, Guatemala, Tajikistan and Luxembourg](#)
- UN Chief Executives Board, 2018, [United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration](#)
- UN, 2021, [UN System Common Position on Incarceration](#)
- IDPC et al, 2023, [The decriminalisation of people who use drugs: An essential component of a human rights-based approach to drug policy - IDPC submission to OHCHR](#)
- Talking Drugs et al, [Interactive map: Drug decriminalisation across the world](#)

With regards to the **obligations to fulfill within the context of the right to health**, we respectfully suggest that the annotated outline takes into consideration the most concerning development in recent years: the lack of appropriate health responses to the overdose crises in North America connected to the emergence of synthetic opioids such as fentanyl. In the USA, overdose deaths have increased from 70,630 in 2019 to an estimated 109,940 in the year ending in February 2023. In Canada, there have been 20,000 accidental overdose deaths since 2020. A rising number of overdose deaths are also currently reported in the North of Mexico and in some European countries. In spite of these devastating figures, policy makers have continued to neglect harm reduction policies that would be specifically appropriate to respond to the overdose crises, including ramping up access to OAT, drug consumption room, and critically the safe supply of opioids. Relevant reports include the following:

- A. Isvins et al. (2020). [Tackling the overdose crisis: The role of safe supply.](#)
- Canadian Drug Policy Coalition (Website). <https://drugpolicy.ca/our-work/case-for-reform/>

With regards to the envisaged section entitled ‘**Health, social and other services for people who use controlled substances**’ (pp. 5-6): It is important to recall here that not all people who use drugs are dependent and in need of treatment. Indeed, according to the UNODC, only around 1 in 10 people who use drugs will develop some dependence that may require treatment. One should therefore be mindful to not fall into the patient vs. criminal dichotomy. Evidence has shown that various countries have used this dichotomy to enforce compulsory treatment and rehabilitation instead of prison - a practice that is harmful to people who use drugs and undermines the right to health. The General Comment should make the distinction between people who use drugs and people who are dependent on drugs clear, and urge member states to ensure that treatment remains always voluntary, without the threat of incarceration should a person decide to stop their treatment or to start using drugs again. Relevant reports include the following:

- INPUD, 2022, [Consensus statement on drug use under prohibition](#)

The section entitled ‘**Health and other ESC impacts of administrative and criminal sanctions related to controlled substances**’ (p. 6) will be a key opportunity to promote policies such as decriminalisation (with the removal of all penalties, whether criminal or administrative, for drug use and related activities), and the responsible regulation of substances with a social justice, racial justice and gender equity focus - aiming at addressing and redressing the devastating harms of punitive drug policies on marginalised communities. The need for responsible regulation should also be highlighted in the final section of the General Comment, ‘The future of drug policy’, to echo the recommendation included in the [2023 OHCHR Report A/HRC/54/53](#).

In the section related to ‘**Measuring the impact/effectiveness of drug policies**’, IDPC encourages the CESCR to consider using indicators used in the Global Drug Policy Index. The Index uses 75 human rights indicators drawn directly from the UN System Common Position on drugs and the UN implementation Task Team’s report ‘[What we have learned over the last ten years: A summary of knowledge acquired and produced by the UN system on drug-related matters](#)’. The Index could be used as a basis for the CESCR to identify a set of key indicators against which to track progress from Member States against the evidence and recommendations promoted by the UN System as a whole. Relevant tool:

- Global Drug Policy Index [map](#), [ranking](#), [report](#) and [methodology](#)