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

Joint written statement* submitted by International Harm Reduction Association (IHRA), Canadian HIV/AIDS Legal Network, DRCNet Foundation, Inc., IDPC Consortium, World Hepatitis Alliance, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 June 2019]

* Issued as received, in the language(s) of submission only.

Violations of The Right to Life in The Context of Drug Control

Harm Reduction International and supporting organisations wish to congratulate the Special Rapporteur on extrajudicial, summary or arbitrary executions for her latest report, and for her ongoing efforts to highlight and address heinous violations of fundamental rights committed in the context of drug control.

While countries are increasingly recognising drugs as a primarily health-related issue, we are witnessing the stepping-up of repressive anti-drug campaigns violating the right to life. With this submission, we wish to highlight some of the human rights violations committed or enabled in the context of drug control, which are relevant to the mandate of this Rapporteur.

a) The death penalty for drug offences

The death penalty remains a possible punishment for drug offences in at least 35 countries, and in the past ten years at least 4,366 people were executed for non-violent drug offences (around 38% of all executions globally). These are minimum confirmed figures: hundreds more executions are likely to have taken place that we are not aware of, because of the systemic lack of transparency characterising the use of capital punishment.

Executions for drug offences are arbitrary on a multitude of levels. Among others:

- 1) They are committed on prohibited grounds: drug offences do not meet the definition of most serious crimes to which the ICCPR mandates that the death penalty be restricted;
- 2) In at least 12 countries the death penalty is the mandatory punishment for certain drug offences, preventing courts from considering all the circumstances of the offence and the offender, including mitigating factors and whether the defendant belongs to a protected group;¹
- 3) In many, if not most, cases, executions follow trials lacking basic legal safeguards. Fair trial violations in capital drug cases are well documented, including: forced confessions; reversal of the presumption of innocence; denial of legal assistance; lack of interpretation and consular assistance to foreign nationals; failure to adequately consider requests for clemency;²
- 4) Individuals sentenced to death often suffer violations of their right to be free from torture and ill-treatment, in the form of: torture prior to, during, or after the trial; failure to receive timely notification of the date of the execution; and, public executions. With regards to the death penalty, human rights mechanisms found that “failure to respect article 7 would inevitably render the execution arbitrary in nature”;³
- 5) Evidence shows that the death penalty for drug offences is often imposed in a discriminatory manner, disproportionately impacting the poorest and most marginalised in society⁴ and within the drug market.⁵ In addition, the overrepresentation of foreign nationals has been linked to prejudice and ethnic discrimination.⁶

Resurgence or expansion of death penalty for drug offences.

Article 6 ICCPR prohibits abolitionist countries from reintroducing the death penalty, and from expanding it to new offences and/or offenders. Nevertheless, a pattern has emerged of reinstatement or expansion of the death penalty for drug offences;⁷ in the form of:

1 CCPR/C/GC/36,Par.37

2 CCPR/C/GC/36,Par.41

3 CCPR/C/GC/36,Par.40

4 Ibid.,Par.44.

5 Among others: Harry and Girelli, “The Death Penalty for Drug Offences: The Impact on Women” (London: Harm Reduction International and University of Oxford, 2019); Hoyle and Girelli, “The Death Penalty for Drug Offences: Foreign Nationals” (London: Harm Reduction International and University of Oxford, 2019).

6 Among others Ginting, “Indonesia Fair Trial Report 2018 (Jakarta: ICJR, 2019)

- a) Ending of moratoria on executions, such as in the case of Indonesia and Sri Lanka, whose President has recently announced the intention to resume executions (after a 43-year moratorium) against individuals sentenced to death for drug trafficking.
- b) (Re-)introducing the death penalty in national legislation. The re-introduction of capital punishment for drug offences is the object of a dedicated bill in the Philippines, which was approved in the lower house of Parliament.
- c) Expansion to new offences. As an example, in late 2018 Bangladesh expanded the application of capital punishment to the manufacture and distribution of methamphetamine.

Notably, in 2014 this Special Rapporteur discussed instances of resumption related to political developments (such as in the cases of Indonesia, Sri Lanka, and the Philippines) and concluded:

“Executions **may be considered arbitrary** if they are resumed owing to extraneous developments, unrelated to the crime or criminal in question. A current deterioration in the law and order situation of a particular State is not attributable to a convict on death row, who may have committed his or her crime years, or even decades, before. The execution of that convict in order to demonstrate strength in the criminal justice system is arbitrary.”⁸

We wish to express particular concern for the case of the Philippines. The re-introduction of the death penalty in a state party to the Second Optional Protocol to ICCPR would be unprecedented, and as such represents a critical test for the international community, and the system of international human rights law.

b) Extrajudicial executions and arbitrary deprivation of life in the context of drug control

Extrajudicial executions are absolutely prohibited under international law. Worryingly, thousands of suspected extrajudicial killings committed in the context of repressive anti-drug campaigns are being reported around the world. Among others, we wish to highlight the situations in the Philippines, Brazil, Bangladesh, and Mexico. In these countries, thousands of mostly economically vulnerable individuals suspected of trafficking drugs are killed in the street, with the perpetrators almost invariably enjoying absolute impunity.

In considering extrajudicial killings, we wish to emphasise:

- 1) The failure to investigate, prosecute, and hold perpetrators accountable in these states; and
- 2) The plight of secondary victims, especially women and children. This was denounced by this Special Rapporteur in 2014 in the context of the war on drugs in the Philippines:

“As the majority of the victims are men, their female partners, by virtue too of their gender-based roles, are left to confront the associated stigma, fear, insecurity and economic deprivation, in addition to the burdens of identifying and burying their dead loved ones and seeking justice.”⁹

c) Positive obligations to protect life

The new General Comment no.36 of the Human Rights Committee spells out States’ positive responsibilities to protect life. Three aspects are particularly relevant to drug policies:

- 1) Duty to take measures to protect the lives of individuals deprived of liberty, including in prisons and compulsory drug detention centres.

According to research by Harm Reduction International, opioid substitution treatment and needle and syringe programmes - lifesaving harm reduction services - are only available in prisons in 54 and 10 countries respectively; while naloxone –overdose reversal medication– is provided upon release in only six countries.

⁷ Unless specified otherwise, figures and information on the use of the death penalty for drug offences come from: Girelli, *The Death Penalty for Drug Offences: Global overview 2018* (London: Harm Reduction International, 2019).

⁸ A/69/265,Par.103 (emphasis added)

⁹ A/HRC/35/23,Par.49

Meanwhile, public and private drug detention and treatment centres continue operating in many countries, which violate fundamental human rights and impose non-evidence based forms of treatment, including forced labour, in some cases amounting to torture and ill-treatment.

2) Duty to “take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, [including] prevalence of life-threatening diseases, such as AIDS, tuberculosis or malaria;”¹⁰

Similarly, the recently adopted Human Rights Guidelines on Human Rights and Drug Policy invite states to “take positive measures to increase the life expectancy of people who use drugs, including scientific, evidence-based information, facilities, goods, and services on drug use prevention, overdose prevention and response, and harm reduction.”¹¹

Notably, among such conditions are the criminalisation of drug use and possession for personal use, lack or prohibition of harm reduction services, obstacles to accessing health services, housing, and employment for people who use drugs, stigma and discrimination.

3) Duty to take measures to avoid “foreseeable and preventable life-terminating harm or injury.”¹² This should be read as including overdose-related deaths, which are the main cause of drug-related death and are broadly preventable through a comprehensive set of measures including decriminalisation of drug use and possession for personal use, community distribution of naloxone, and harm reduction services.¹³

Recommendations

In light of the above, we respectfully ask the Special Rapporteur to:

- Continue denouncing human rights violations committed or enabled in the context of drug control; and calling for a human-rights and health-based approach to drugs;
- Promote an expansive interpretation of the right to life which includes positive obligations to avoid preventable deaths, and promote the enjoyment of a life with dignity – in line with General Comment no.36 of the Human Rights Committee; and
- Produce and disseminate a report on the whole set of human rights violations committed in the context of drug control relevant to her mandate; also reflecting on States’ responsibilities related to the enjoyment of life in dignity, and the obligation to protect the life of individuals under their direct control – such as in detention and in state-run drug treatment centres.

Anti-Death Penalty Asia Network (ADPAN), Geneva Platform on Human Rights, Health and Psychoactive Substances, Institute for Criminal Justice Reform (ICJR), International Network of People who Use Drugs (INPUD), LBH Masyarakat, NGO(s) without consultative status, also share the views expressed in this statement.

¹⁰ CCPR/C/GC/36,Par.26

¹¹ UNAIDS et al., ‘International Guidelines on Human Rights and Drug Policy’ (2019), 5.vi

¹² Ibid.,Par.6

¹³WHO, “Community Management of Opioid Overdose” (Geneva, 2014); A/65/255,Par.54