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

Submission to the Committee against Torture regarding drug control laws

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The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health would like to take this opportunity to share with the Committee against Torture his views on the right to health and drug policy. The Special Rapporteur has highlighted, in detail, the importance of and need for a rights based approach to drug policy in his report to the General Assembly (A/65/255, 6 August 2010). As outlined in that report, it is the opinion of the Special Rapporteur that excessively punitive approaches to drug control have resulted in countless human rights violations, including the right to health, of people who use drugs by perpetuating risky behaviours, reducing access to medicines, particularly to opioid substitution therapies and analgesics, and restricting access to information about medical treatment. Instead, States should adopt a harm-reduction based approach to drug control that more adequately protects the right to health of drug users and the general public.

Overview of relevant international legal instruments

The international drug control regime aims at decreasing the illegal use and supply of controlled substances while ensuring access to controlled substances for medical and scientific purposes. Even though the international drug control regime aims to promote public health, explicit consideration of human rights is absent in the core three treaties[1] and has lacked priority among the implementing bodies.

The right to health as contained in article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR) requires States to recognize the right to health of all people, including people who use drugs and people who are dependent on drugs. The distinction between drug use and drug dependence should be emphasised to prevent conflation between the two categories. Drug dependence is a chronic, relapsing disorder, which should be medically treated using a bio-psychosocial approach. Drug use, on the other hand, is neither a medical condition, nor does it necessarily lead to drug dependence. In this regard, the Special Rapporteur would like to bring to the Committee's attention the 2008 Principles of Drug Dependence Treatment, discussion paper by the World Health Organization and the United Nations Office on Drugs and Crime, which explicitly states that the same standards of ethical treatment should apply to the treatment of drug dependence as other health-care conditions, including the right to autonomy, and self-determination of self-determination on the part of the patient, and the obligation for beneficence and non-maleficence on behalf of treating staff.

[1] The Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, which consolidated previous international agreements and brought plants such as marijuana, coca and the opium poppy under international control; the Convention on Psychotropic Substances (1971), which did the same for synthetic substances and precursor chemicals used in manufacturing drugs; and (c) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), which increased the scope and intensity of international policing of the drug trade and highlighted the connection between the drug trade and organized crime.

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights casts an immediate obligation on States to ensure the enjoyment of all aspects of the right to health without discrimination. According to the General Comment, States are required to respect, protect and fulfil the right to health of all people, without discrimination. Drug use or drug dependence, therefore, cannot constitute grounds for curtailing a person's right to access treatment regardless of whether the national drug laws are punitive in nature and provide for incarceration.

The right to health contains freedoms and entitlements, which should be ensured for all, without discrimination, including people who use drugs or are dependent on drugs. It includes the right to be free form non-consensual medical treatment and experiment and the right to be free from torture. The right to health requires States to provide information to enable people to make informed choices about their health. The State should facilitate people who use drugs or are dependent on drugs to make informed choices about their health by making information regarding drug use, especially safe methods of using drugs, available and accessible. The State is under a responsibility to ensure that good quality and medically appropriate facilities and services are available and accessible for people who use drugs as well. The State is also obliged to make sure that medically appropriate treatment is provided to people who use drugs only with their informed consent.

Impact of criminal laws and punitive measures against drug use on the right to informed consent and the right to health

Criminalising drug use or imposing punitive measures against drug use has a disproportionate impact on the right to health of people who use drugs or are dependent on drugs. Moreover, the distinction between people who use drugs and people who are dependent on drugs is not followed in stringent drug control regimes. As a result, incarceration and/or compulsory treatment is often imposed on people regardless of their drug-dependent medical and health condition. Forced labour, solitary confinement and experimental treatment administered without consent may violate international human rights law, including the right to health and the right to be free from torture, and cruel, inhuman or degrading treatment or punishment. These are illegitimate substitutes for evidence-based measures such as substitution therapy, psychological interventions and other forms of treatment administered with full, informed consent.

The Special Rapporteur on torture and other cruel and degrading treatment or punishment highlighted the requirement of informed consent in his report to the Human Rights Council (A/HRC/10/44). In that report, he mentions that forcible testing of people who use drugs without respecting their autonomy and their right to informed consent may constitute degrading treatment especially in detention settings. States are obliged to respect the enjoyment of the right to health, including by refraining from using coercive medical treatment. The requirement of informed consent, including the right to refuse treatment, should be observed in administering any treatment for drug dependence.

The Special Rapporteur also refers to General Comment No. 20 of the Committee on Civil and Political Rights, which mentions that States should pay special attention to ensure that a person has given free and informed consent for medical and scientific experimentation, especially if the person is in detention or imprisonment. All health care interventions, including drug dependence treatment, should therefore be carried out on a

voluntary basis with informed consent, except in clearly defined exceptional circumstances in conformity with international human rights law that guarantees such provisions are not subject to abuse. The Special Rapporteur considers any failure to provide the information necessary to enable persons who use drugs or are dependent on drugs to give informed consent may undermine the enjoyment of their right to health.

Impact of drug control laws on the freedom from stigmatisation and discrimination

Fear of punishment, especially incarceration, may discourage people who use drugs from seeking and accessing medical services and treatment when required. It results in stigmatisation and discrimination of people who use drugs by characterizing them as social outcasts. Privacy and confidentiality concerns also arise when punitive policies are used to discourage drug use. People who use drugs may be deterred from accessing medical treatment for fear that their medical information may be shared with other authorities, resulting in imprisonment. Drug registries, where people who use drugs are listed, may further prevent people from accessing treatment for fear of violation of their right to confidentiality. Consequently, drug use is driven underground, perpetuating risky behaviour. This has also severe implications for the HIV/AIDS response of the country and increases the disease burden.

Stringent drug control laws also make those who use drugs vulnerable to harassment by police officials. Such harassment may increase the risk of physical and mental illness. The stigma created or reinforced through punitive enforcement or treatment may also increase health risks. The continuing imposition of criminal penalties for drug use and possession perpetuates many of the major risks associated with drug use. Perpetuation of stigma, impeding access to treatment, and worsening health conditions may violate the right to health of people who use drugs.

Less restrictive approaches to drug control, including decriminalization or de-penalization, should be considered to effectively prevent risky behaviour by people who use drugs and to reduce the harmful effects associated with drug use. The right to health requires States to adopt the least restrictive approach where alternative limitations on the enjoyment of the right to health are available. Decriminalization would reduce the harmful effects associated with criminal penalties, such as imprisonment and stigmatization, and at the same time allow drug users access to treatment and medicines. It would reduce the number of deaths associated with drug use and the increased vulnerability of drug users to HIV. This has been successfully achieved in some countries without any of the imagined deleterious consequences of increased drug use or higher crime rate.

Impact of stringent drug control laws on the availability and accessibility of harm reduction treatment

Drug control regimes, which impose punitive measures against drug use, restrict the right to health of people who use drugs by preventing availability of and accessibility to medically appropriate treatment. The Special Rapporteur is of the opinion that laws enabling harm reduction programs, as opposed to laws criminalizing drug use and drug possession, promote the right to health by maintaining the distinction between people who use drugs and those who are dependent on drugs, respecting the autonomy of the individual, being evidence-based and reducing the stigma. Compulsory rehabilitation

and treatment, on the other hand, does not take into account informed consent of people who are dependent on drugs. Compulsory rehabilitation, including "labour therapy", is not evidence-based and does more harm than good to people who are dependent on drugs.

In 2012, twelve UN agencies[2] issued a joint statement on compulsory drug detention and rehabilitation centres, in which they referred to evidence that the most effective responses to drug dependence and the health-related harms associated with it, such as HIV infection, require treating drug dependence as a health condition through evidence-informed and rights-based approaches. The Special Rapporteur is of the opinion that harm reduction programmes should be considered as an evidence-based and rights-based approach to drug use and drug dependence.

Harm reduction methods are effective in reducing vulnerability to HIV and include needle exchange programs, opioid substitution therapy, as well as outreach and education programs. The General Assembly endorsed harm reduction methods in its 2001 Declaration of Commitment on HIV/AIDS (A/RES/S-26/2). In its 2006 Political Declaration on HIV/AIDS (A/RES/60/262), it reiterated that the prevention of HIV infection must be the mainstay of national, regional and international responses to HIV/AIDS and reaffirmed its commitment to intensifying efforts to ensure that prevention programmes, including harm reduction efforts related to drug use, are available in all countries, particularly the most affected countries. The Special Rapporteur considers that stringent drug control laws often prohibit such programs and thus prevent drug users from taking responsible steps to protect their right to health.

Harm reduction programs should be promoted within prisons as well. The right to health casts a core obligation on States to ensure availability and accessibility to treatment without discrimination, especially for vulnerable and marginalized groups. Prisoners and detainees constitute a vulnerable population, as the extent of their enjoyment of the right to health is restricted and dependent on State authority. The 1955 Standard Minimum Rules for the Treatment of Prisoners expressly provide for medical services within prisons. Accordingly, Rule 22 (2) states that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."

Circumstances, when harm-reduction programs and evidence-based treatment are available to the general public yet unavailable to persons in detention, may contravene the principle of non-discrimination. In this context, the Special Rapporteur refers to the General Assembly resolution on Basic Principles for the Treatment of Prisoners (A/RES/45/111), which states that, "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9). Moreover, because of the health risks associated with incarceration, greater efforts may be required within prisons to meet public health objectives,

[2] International Labour Organisation; Office of the High Commissioner for Human Rights; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organisation; United Nations Population Fund; United Nations High Commissioner for Refugees; United Nations Children's Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organisation; and Joint United Nations Programme on HIV/AIDS.

especially in the context of HIV and harm reduction. The 2009 WHO Madrid Recommendation: Health protection in prisons as an essential part of public health points to the overwhelming evidence that harm reduction methods, including needle and syringe exchange programs and opioid substitution therapy, are effective as health protection measures in prisons.

Needle and syringe exchange programs prevent people from sharing needles and therefore reduce the risk of spread of HIV. While promoting the use of needle exchange programs, WHO noted that compelling evidence exists that they reduce HIV infections substantially, in a cost-effective manner, and without any major negative consequences. The use of needle and syringe programs is also consistent with standard public health principles because elimination of a vector (in this case, the contaminated needles) reduces transmission of vector-driven diseases.

Opioid substitution therapy (OST) is evidence-based treatment, involving prescription of substitute medications for opioid dependence, such as methadone or buprenorphine. According to WHO's estimates, global availability of OST could reduce cases of new HIV infections by over one hundred thousand, reduce significantly the prevalence of other blood-borne diseases, and reduce overdose deaths from opioid use by nearly 90 per cent. Prohibition of OST programs may result in drug users suffering from acute withdrawal symptoms and higher incidence of overdose following drug dependence treatment due to the individual's decreased tolerance for the drug.

With respect to concerns regarding withdrawal symptoms, the report of the Special Rapporteur on torture (A/HRC/10/44) also mentions that withdrawal symptoms can cause severe pain and suffering if not treated with appropriate medical treatment. It further states that there is an evident potential for abuse of withdrawal symptoms, particularly in custody situations, and that the use of withdrawal symptoms may amount to torture if used for any purposes mentioned in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Laws criminalising drug use and drug possession may also have an adverse impact on healthcare workers and outreach workers who provide harm reduction facilities to people who use drugs. Fear of imprisonment prevents outreach workers from disseminating information about their work and facilities, which negatively effects access to such services by drug users.

The right to health requires States to fulfil the right to health by adopting appropriate laws and administrative measures towards the full realization of the right to health of everyone. States should therefore provide for measures favouring positive health results and ensure that healthcare professionals are trained to recognize and respond to the specific needs of vulnerable and marginalized groups.

Impact of drug control laws on access to palliative care

Laws prohibiting the possession and use of drugs also impact the availability and accessibility of medicines required for palliative care and other health conditions. Access to controlled medicines is essential in the management of moderate to severe pain, including as part of palliative care for people with life-limiting illnesses; certain emergency obstetric situations; and management of epilepsy. The right to health requires States to provide essential drugs mentioned in the WHO list of essential medicines.

Recognising the need of opioid analgesics in relieving pain, WHO has categorised them as essential medicines. It is therefore incumbent on the State to facilitate physical and economic access to such essential medicines. Patients with cancer and HIV require such analgesics to relieve pain. People living with HIV who are also dependent on drugs may suffer more under punitive drug laws because of the resulting absence of OST as well as palliative care.

Compliance with procedural requirements associated with stocking, supplying and prescribing scheduled medications can be burdensome for health-care institutions and workers, creating a barrier to the supply of these medications. Healthcare workers also need to be trained in palliative care to address the myth that opioid analgesics may lead to addiction. Strict control of opioid analgesics also impacts economic accessibility, a central tenet of the accessibility of health facilities, goods and services. Controlled opioid analgesics have an impact on the affordability of medicines, as the costs of regulatory compliance may inflate the price of drugs, putting them beyond the reach of many consumers.

Impact of drug control laws on information accessibility

Apart from access to health-related services, the right to health also requires States to provide access to related information and education. Moreover, correct and accurate information must be provided to people to enable them to make informed choices about their health. Information intervention, such as education programmes, is also designed to minimize harm to individuals who use drugs. Information on first aid and on safe administration of drugs can, for example, help in reducing deaths due to drug overdose. Outreach programs are also used to reach out to people who use drugs in their own communities, and to provide information and referral to medical testing and services.

Laws that criminalize the dissemination of information on safe practices while using drugs and on availability of harm reduction treatment are not in consonance with the right to health. They impede access to information required by people who use drugs and who require this knowledge to make responsible informed choices for the enjoyment of their right to health.

I hope the above observations will be useful for future considerations of the Committee against Torture on the above-mentioned matters. I remain at the Committee's disposal for further questions and deliberations.

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