



International Centre
on Human Rights
and Drug Policy

Drugs and the UN Convention on the Rights of the Child: Unpacking Article 33

Damon Barrett
Project Director

UN Convention on the Rights of Child

- Major shift in thinking about child rights
- Comprehensive
- 193 States parties
- Overseen by Committee on the Rights of the Child
- Only UN human rights treaty to mention drugs (Art 33)
- A lens through which to view drug policies

Simplistic messages...



THE CONVENTION ON
THE RIGHTS OF THE CHILD



Articles 21 - 54

Article 33

**Children have the right
to a drug-free world.**



created by Art Mawhinney
Animagination



unicef



Article 33

“I think we can use the convention much more”

Original proposal: China 1982

preventing and prohibiting the
child from using drugs

- Intended as a sub-paragraph to then article 12 on the right to health. E/CN.4/1983/30/Add.1, para. 118

“States Parties shall 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 the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.”

Article 33 Convention on the Rights of the Child

...prevent the use of children in the illicit production and trafficking of such substances

- ILO Convention 182 – Worst forms of child labor art. 3(c)
- International convention on the illicit traffic in narcotic drugs and psychotropic substances 1988 – preamble
- Clearly captures:
 - Farming of coca, opium, marijuana
 - Production of narcotic drugs and psychotropic substances (Hundreds of listed substances)
 - Trafficking/trade in those substances

...prevent the use of children in the illicit production and trafficking of such substances...

- Worst forms of child labour **per se**? Or worst forms of child labour **because illegal**?
- Consider “*illicit production*” (licit production/trade of the same crops for medicinal purposes NOT a worst form of child labour – so how is harm generated?)
- What about involvement in tobacco and alcohol production/trade?

illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties

1. Which drugs are included?
 - NOT alcohol or solvents (mostly dealt with under art 24)
2. What is a “relevant international treaty”?
 - 1961, 1971, 1988 drug conventions
 - Other drug treaties still in force between certain states?
 - Framework convention on tobacco control?
3. What qualifies as an “illicit use”?
 - Consider legal age restrictions on opioid substitution therapy (none in Colombia)

...relevant international treaties...

- What is the relationship between CRC and the three drug treaties?
 - Post dates them and contains specific drug-related article (art 30 VCLT)
 - Specific to children, drug treaties are not (Lex specialis)
 - Ordinary meaning (art 31 VCLT) appears to limit the treaties to the substances referred to

“States Parties shall 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 the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.”

Reading 1

“States Parties shall 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 the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.”

Reading 2

Leaves us with:

...shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use...

Most important clause:

...shall take all **appropriate measures**, including legislative, administrative, social and educational measures, **to protect children** from the illicit use...

“including legislative, administrative, social and educational measures”

- Non-exhaustive
- BUT – absence of “criminal” informative

See also

- art 40 (e.g. Incarceration as last resort)
- Consistent recommendations of CRC committee
- UNICEF implementation guidelines

“from the illicit use”

- Clearly requires primary prevention (but the article is too often limited to it)
- Whose use? Not defined
 - Parental use?
 - Use in the community?
- Appropriate measures: **What does the protection of children from drugs justify?**

Children as Justification

“The drugs law will save our children and young generation...”

Andi Mattalatta, Law and Human Rights Minister of
Indonesia, 2009

War on drugs ***“...necessary to keep drugs
away from our children”***

President Filipe Calderon, Mexico, 2007

Appropriate Measures?



Appropriate Measures?



Appropriate Measures?



GET BIRTH CONTROL GET CASH



C.R.A.C.K. pays \$200 for

- IUD
- Depo-Provera
- Norplant
- Tubal ligation

If you are now, or have been addicted to drugs and/or alcohol,
THIS OFFER IS FOR YOU!

Babies born with drugs in their system often die at birth. The surviving infants don't stand much of a chance at life, especially when they bounce around foster homes - rarely getting adopted.

You can prevent this type of 'legal' child abuse when you refrain from getting pregnant while using drugs, whether that be long term or permanent.

THE CHOICE TO USE BIRTH CONTROL IS YOURS.

Your call to us is confidential, and we praise your efforts in doing the right thing. Our supportive staff will guide you through the simple process.

Don't wait; make the call now.

1-888-30-CRACK

Appropriate Measures?



CAMBODIA

“Skin on the Cable”

The Illegal Arrest, Arbitrary Detention and Torture
of People Who Use Drugs in Cambodia

HUMAN
RIGHTS
WATCH

*“[A staff member] would use the cable to
beat people... On each whip the person’s skin
would come off and stick on the cable...”*

—M’NOH, AGE 16

Appropriate Measures

- Must be read in the light of (at a minimum):
 - Other articles in the CRC
 - Evidence
 - Best practice

Recent Irish study – under 19s using opiates

What does it tell us about “appropriate measures”?

- 44 had injected (18 of those HCV+)
- 45 previous psychiatric contact
- 17 had deliberately overdosed - 14 girls
- 26 homeless in last month
- Majority – parental/sibling alcohol or opiate use
- 41 had past convictions
- 5 currently in school
- Rt to physical and mental health (art 24)
- Adequate standard of living (art 27)
- Protection from abuse/neglect (art 19)
- Protection for the family (preamble, arts 18, 27)
- Juvenile Justice (Art 40)
- Rt to education (art 28)

The 'best interests' principle and Age restrictions on harm reduction services

Age restrictions

- In 'best interests' to not use drugs – but already using
- Clear cut but arbitrary
- Excludes many young people on the basis of age (Art 2)
- Decreases treatment options
- Legal risk for service providers (aiding and abetting)
- No voice to young person
- Discourages knowing who is accessing services (age related data)

VS

Best interests of the child

- Indeterminate – but this is exactly the point!
- Greater discretion with the service provider - Increased options to 'protect children' (Range of arts, incl. 2 & 6)
- Greater legal protection for service provider
- Greater participation of young person (art 12)
- Facilitates better data collection (art 2)

Thank you

Damon Barrett

Project Director, International Centre on Human
Rights and Drug Policy

Senior Human Rights Analyst, International Harm
Reduction Association

Editor, 'Children of the Drug War'
Forthcoming, 2011