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Statement by
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ARBITRARY DETENTION**

47th Session of the Human Rights Council
Agenda Item 3

2 July 2021



Madam President, Excellencies, Distinguished Delegates and Representatives of Civil Society,

It is my honor to address the Human Rights Council and to present the study on arbitrary detention relating to drug policies prepared by the Working Group on Arbitrary Detention at the request of the Council.

The study aims at ensuring that the absolute prohibition of arbitrary detention, as required by international law, is included as part of an effective criminal justice response to drug-related crimes, and that such a response also encompasses legal guarantees and due process safeguards.

It also highlights the broad scope of issues at stake, their inter-connected nature and the need to incorporate human rights as a part of the response of all actors from different sectors.

The study was prepared following broad consultative process, which included the collection of questionnaire responses, consultations with the United Nations Office on Drugs and Crime and the International Narcotics Control Board as well as a virtual expert consultation. A briefing on the study was also given at the sixty-third session of the Commission on Narcotic Drugs. The Working Group thanks all stakeholders for their contributions, prepared and provided to the Group in a challenging setting of the global pandemic.

Madam President,

In this study, the Working Group notes with concern the increasing instances of arbitrary detention as a consequence of drug control laws and policies and finds that people who use drugs are particularly at risk of arbitrary detention. A related issue is the criminalization of possessing paraphernalia associated with drug use enacted in several jurisdictions. This

not only has negative impact on an effective realisation such individual's right to health but also contributes significantly to overcrowding in many detention facilities across the globe.

The Working Group would like to highlight that imprisonment for drug-related offences should be a last resort and in principle, should be used only for serious crimes.

Madam President,

The so-called war on drugs has also resulted in a large increase in detention and imprisonment for drug-related offences. Disproportionate actions by some States to apply criminalization provisions of drug-control treaties or to incorporate these in their domestic legislations have frequently resulted in widespread human rights violations leading to increased arbitrary detention.

In this study, the Working Group identified several human rights violations in the so called war on drugs context, including interrogating suspects under the influence of drugs and subjecting persons to testing without their consent or a judicial warrant; the overuse of and prolonged pre-trial detention, lasting in some instances for months or even years and physical or psychological violence towards detainees, including *inter alia* the withholding of substitution therapy from drug dependent suspects.

Another serious concern is the identified wide range of violations of fair trial standards for persons accused of drug-related crimes.

Furthermore, disproportionate sentences for drug-related offences, often accompanied by the ban on parole or amnesty for those convicted for drug-related offences in some jurisdictions, contribute to prison overcrowding and call into question the compliance with international standards requiring

respect for the dignity of persons deprived of their liberty. The Working Group also recalls that imposition of the death penalty for drug-related offences and the misuse of drug control to silence human rights defenders, journalists and political opponents is incompatible with international standards.

The Working Group thus recommends that States:

- Decriminalize the use, possession, acquisition or cultivation of drugs for personal use, including the possession of associated paraphernalia, as well as release persons detained only for drug use or possession for personal use, review their convictions and expunge their records.
- Prioritize non-custodial alternatives to prison for those accused or convicted of minor drug-related offences.
- Review procedures relating to detention, arrest, search, testing, pre-trial detention, trial and sentencing in order to address situations enabling arbitrary detention and other human rights violations.
- Ensure proportionate sentencing for drug-related offences through amending relevant legislation and sentencing guidelines.

Madam President,

The Working Group has also observed that criminalization of drug use facilitates the deployment of the criminal justice system against drug users in a discriminatory way, with law enforcement agencies often targeting members of vulnerable and marginalized groups, such as minorities, people of African descent, indigenous peoples, women, persons with disabilities, persons with AIDS and lesbian, gay, bisexual, transgender and intersex

persons. Homeless persons, sex workers, migrants, juveniles, the unemployed and ex-convicts may also be vulnerable.

In this regard, the Working Group recommends that States:

- Address how the justice process deals with specific groups that may be the object of discrimination in order to stop their targeting and the disproportionate drug control enforcement efforts.

Madam President,

Let me now turn to the subject of health care for drug users in detention, which amount to some 20 per cent of the persons deprived of their liberty worldwide.

The Working Group noted with concern the insufficient availability of harm reduction services and drug treatment for drug-dependent persons in detention. Only 56 States provide opioid substitution therapy in prisons, and when provided, it may be available only to limited percentage of inmates. In several States such therapy is prohibited for society at large.

The Working Group also views that the practice of confining people who use or are suspected of using drugs against their will in State-run or in private compulsory drug treatment centres can give rise to arbitrary deprivation of liberty. Similarly, courts should not coerce defendants with a choice between imprisonment and drug treatment. The drug treatment must lie solely in the hands of specifically trained health professionals and to this end, the practice of drug courts should cease.

The Working Group underscores the importance of making drug treatment voluntary, based on informed consent and therefore

recommends prompt closing all compulsory drug detention centres and making available voluntary, evidence-informed and rights-based health and social services in the community as an alternative. Moratoriums on further admissions to such compulsory drug detention or treatment centres should be adopted.

Finally, Madam President, Excellencies, Distinguished Delegates and Representatives of Civil Society,

The Working Group would like to highlight the important contribution that the civil society, including associations of drug users, can and do play in the design, implementation, monitoring and evaluation of drug policies. It therefore calls on States to uphold the role of all these stakeholders by giving them a meaningful voice and enabling them to work without threat of criminalization or other penalties.

The Working Group welcomes the continued engagement with all relevant actors on this important topic and wishes to especially highlight the importance of collaborative approach to be adopted by the States, the UN agencies, regional and national organizations, and all other stakeholders in furthering the implementation of the recommendations made in the study. The Working Group stands ready to facilitate such collaborations.

I thank you for your attention and look forward to your comments and reactions.
