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Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS), which will take place in New York in April 2016

7 December 2015

Mr. Yury Fedotov,

I have the honour to address you in my capacity as United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (right to health), pursuant to General Assembly resolution 57/5 and Human Rights Council resolution 24/6.

In connection, please accept this letter in the context of the reconvened 58th session of the Commission on Narcotic Drugs, which will take place in Vienna from 9 to 11 December 2015, as part of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS), scheduled to take place in New York in April 2016.

I welcome the UNGASS process which is an important opportunity to reflect upon the achievements and challenges of international drug control, and its impact upon the enjoyment of human rights and fundamental freedoms. For two decades, the UN General Assembly has consistently called for drug control to be carried out "in full conformity" with the UN Charter and international law and standards, specifically, human rights. While such language is welcome, it becomes meaningless unless underpinned by clear and explicit human rights standards and principles. Right now, this pledge only represents a consensus based commitment repeated in different fora that remains far from being realized.

As Special Rapporteur on the right to health, I am concerned about the lack of explicit and clear human rights standards and commitments in the current negotiations for the UNGASS outcome document. While human rights is included as a theme, it has played a very minor role in the negotiations to date, and risks becoming a hollow opening paragraph with no meaningful debate, development or follow up.

…/…

To: Mr. Yury Fedotov
Executive Director
United Nations Office on Drugs and Crime
cc: Secretariat to the Governing Bodies
Division for Treaty Affairs
United Nations Office on Drugs and Crime

Recalling the commitment made by the 2005 World Summit 'to support further mainstreaming of human rights throughout the United Nations system', Member States must ensure this commitment is upheld as they develop the substantive elements of the UNGASS discussions. Human rights must be a cross-cutting issue informing all discussions at the high-level general debate, and thematic workshops.

As highlighted by the recent Study on the impact of the world drug problem on the enjoyment of human rights, presented by the UN High Commissioner for Human Rights to the Human Rights Council in September 2015[1], the respect for and the protection and promotion of human rights in the context of the world drug problem is essential.

From the perspective of the right to health, I wish to bring attention to the following critical issues:

Barriers to realising the right to health under the current framework of drug control

It is important to have a broad understanding of what health is[2], and that health is a human right essential for the exercise of other human rights. Specifically, the impact of drug control on the right to health is a cross-cutting theme across the entire market chain, arising from an often violent illicit drug market, and highly punitive and repressive State responses. Importantly, the right to health includes more than access to health services; it is also the right to the underlying determinants of health, including equality and non-discrimination, protection against violence, participation, and safe and enabling environments for health and well-being.

Repressive responses to *inter alia* drug use, rural crop production, and non-violent low level drug offences pose unnecessary risks to public health and create significant barriers to the full and effective realisation of the right to health, with a particularly devastating impact on minorities, those living in situations of rural and urban poverty, and people who use drugs.

A range of drug control measures undertaken to reduce the supply of illicit drug crops have had significant impacts on the mental and physical health of communities, particularly those affected by crop eradication. Epidemic levels of violence in communities located along illicit transit routes and affected by militarised State responses are of particular concern.

Criminalisation and incarceration

The very serious mental and physical health consequences of imprisonment, both for prisoners and the wider community, are now widely known as are the often lifelong effects for the entire family of criminal records, including barriers to access to social services and employment. Criminal laws relating to drug use and related policing also have the clear health-deterrent effect of driving people away from the health services they need, impeding responses to HIV, hepatitis C, overdose, and drug dependence. The ineffectiveness of such criminal laws in delivering health benefits or deterring drug use is also now well established by evidence-based research.

1 A/HRC/30/65

2 WHO defines health as "(…) a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946.

As drug control enforcement fuels rising incarceration rates, overburdened prison systems are unable to provide acceptable standards of care and living in both pre and post conviction environments. Conditions such as overcrowding, denial of essential medical services—including harm reduction—create an environment where cruel, inhuman, and degrading treatment is more likely to occur. Likewise, when drug offenses are pursued through the administration of pre-trial detention, and disproportionate sentencing, arbitrary detention is more likely to occur.

While I welcome the attention within the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to alternatives to conviction and punishment, I would like to underline that conviction and punishment are late stages in the criminal justice process, and of no help to those in pre-trial detention. At the root of many health related problems faced by people who use drugs is criminalisation itself, which only drives issues and people underground and contributes to negative public and individual health outcomes.

As a step towards the fulfilment of the right to health, drug use and possession should be decriminalized and de-penalized alongside increased investment in treatment, education, and other interventions discussed further below.

The death penalty for drug offenses, the use of lethal force, and arbitrary executions

Recalling the consistent findings of the UN Human Rights Committee, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Torture and other mandate holders, I would like to reiterate that the death penalty for drug offences does not meet the threshold of 'most serious crimes' for the purposes of the International Covenant on Civil and Political Rights.

In this connection, the General Assembly has called for a moratorium on all executions and a reduction in the number of offences for which the death penalty may be applied. These days only a very small minority of States continue to impose the death penalty for drug offences, indicating a clear State practice against its use. I support the calls by the UN Secretary General, the International Narcotics Control Board, and many Member States for the abolition of the death penalty for drug offences.

The arbitrary deprivation of life is not limited to judicial executions and extends to summary executions by military and police, and the unnecessary use of lethal force in the context of drug enforcement. All States must adhere to international human rights law and existing standards with regard to the use of force in all anti-drug operations. I am seriously concerned that State policies can contribute to and worsen violent criminal drug markets within which homicides increase significantly, and I call on States to focus their attention during the UNGASS on the reduction of violence related to the drug enforcement.

Access to evidence based treatment for drug dependence

While I welcome the new SDG target (3.5) for the increase in access to drug dependence treatment, I regret that the target fails to explicitly incorporate human rights standards and to set time bound objectives as with the other health targets.

The right to health requires that drug dependence treatment be available, accessible (physically, economically, geographically), acceptable (culturally, for women, for children and other key populations), and of sufficient quality, meaning based on the best available evidence.

Progressive realization of the right to health necessitates adequate budgetary allocation. It is disturbing to see that worldwide drug dependence treatment remains significantly under-resourced as compared with drug enforcement.

People experiencing drug dependence have different and complex needs, which require a wide range of diverse options and are more effectively addressed when those concerned can participate in the design, delivery and assessment of their treatment. The views and input of people who are drug dependent into their own treatment is essential for a successful outcome.

Moreover, acceptability of drug treatment includes informed consent and the right to refuse treatment. In this connection, I would like to join my predecessors, other UN independent experts, and UN agencies in calling for the closure of compulsory drug detention and rehabilitation centres. These centres are not only manifestly contrary to human rights law and standards but have proven ineffective in the treatment of drug dependence. The UNGASS should serve as a platform for setting targets for the closure of such centres.

Access to controlled medicines

International human rights law places particular and explicit emphasis on the obligation of States to guarantee a number of relevant health and health-related services. This includes the provision of essential controlled medicines for the management of pain, including in palliative care, the treatment of drug dependence, and other conditions.

Despite this obligation, approximately four fifths of the world population, overwhelmingly in the global south, lack adequate access to opiates for the treatment of pain. Access to opioid substitution therapy medications is dangerously low worldwide, contributing to a situation in which global HIV targets will be missed by decades.

While acknowledging that a range of barriers are responsible for this current global health crisis, there must be a focused commitment to addressing how stigma and fear of addiction impede access to these medicines, as identified by the International Narcotics Control Board in its 2011 report.[3] Given the clear legal mandate within the drug treaties to ensure access to controlled medicines, and the concurrent obligation under the right to health, I urge the relevant UN drug control bodies to take a proactive role and focus on setting realistic targets for improving access on the ground by 2030, in line with the sustainable development goals.

Access to harm reduction measures

The right to health includes an entitlement to health-care goods, services and facilities which are available in adequate supply; accessible geographically (including in detention facilities), financially, and on the basis of non-discrimination; culturally acceptable, including to minorities, indigenous populations and women; and of good quality.

It has been ten years since the first Special Rapporteur on the right to health called for the implementation of harm reduction programmes as part of State obligations under the right to health. Over the ensuing decade, this call has been repeated based upon the proven effectiveness of harm reduction programmes in preventing the transmission of blood borne viruses, and generally in promoting the health and dignity of people who use drugs.

3 Report of the International Narcotics Control Board on the Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes, 97, U.N. Doc. E/INCB/2010/1/Supp.1 (2011)

However, despite the strong emphasis on the provision of harm reduction programmes, the evidence of their effectiveness in achieving positive health outcomes, and the increasing number of Members States implementing a harm reduction response[4], the issue continues to be unproductively politicized within UN drug control debates.

The provision of harm reduction must not be seen as merely a policy option for States. Rather, the provision of these programmes for people who use drugs, including but not limited to the core UNODC/WHO/UNAIDS interventions, constitute a legal obligation as part of State obligations to progressively realize the right to health. Given the low priority assigned to harm reduction globally, reflected by the low levels of funding and implementation of these programmes in communities and prisons, I urge States to commit the maximum available resources to scale up investment.

Coupled with a range of interventions, the underlying principle of harm reduction is human rights in practice. Reducing health harms and risks associated with drug use complements the underlying objectives of the drug control treaties. Therefore, I call for a more proactive and results-oriented discussion of harm reduction at the UNGASS that includes target setting in key areas, including: the scale up of HIV-related harm reduction interventions, including in places of detention, to meet identified needs by 2030 in line with the sustainable development goals; and time bound targets for ensuring adequate coverage of naloxone access to reduce opiate overdose deaths.

The rights of the child

I welcome the thematic focus on children and young people at the UNGASS and recognise the wide range of children's health rights affected by drug use, the drug trade and repressive government policies across the supply chain. However, I am concerned that despite the wide range of child rights engaged, the issues at stake have been addressed in a very limited manner during current negotiations.

It is widely accepted that prevention is an important part of addressing drug use among children. However, too often what is meant as prevention turns into practices that are neither grounded in evidence nor in human rights. The right to health requires that prevention be pursued through evidence-based interventions as well as accurate and objective educational programmes and information campaigns.[5] International prevention standards have been developed by UNODC and endorsed by the Commission. I call on all States to agree to the timely and effective implementation of these standards.[6]

Historically, there has been insufficient attention to the many other ways in which children and their right to health are affected by drugs, the drug trade, and punitive State models. This includes children of incarcerated parents, incarcerated children, children in streets, children experiencing drug-related violence, children involved in the drug trade, children in families coping with drug dependence, and children who already use drugs for whom services remain inadequate.

One of the arguments used in support of the "war against drugs" and zero-tolerance approaches is the protection of children. However, history and evidence have shown that the negative impact of repressive drug policies on children's health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalized,

[4] Global State of Harm Reduction 2014, Harm Reduction International, http://www.ihra.net/files/2015/02/16/GSHR2014.pdf
[5] Isiodore Ibot and Joanne Csete, Prevention of Drug Use and Problematic Use, Open Society Foundations, 2015
[6] UN Office on Drugs and Crime, International standards on drug use prevention, 2013, Vienna

do not have access to harm reduction or adequate drug treatment, and are placed in compulsory drug rehabilitation centres.

The UN Convention on the Rights of the Child has now been ratified or acceded to by 196 States and should serve as an important framework for considering these and other issues of vital importance to the right to health of all children.

I thank you for taking the time to consider this letter alongside the many other inputs you are receiving. I am committed to participating in the UNGASS deliberations and intend to submit a fuller contribution, in written form, prior to the Special Session. I wish States, relevant UN agencies, and civil society organisations a fruitful and productive process in the lead up to this important event.

I remain at your disposal and should further information or clarifications be required with respect to this letter, I can be contacted through Ms. Dolores Infante-Cañibano (tel: +41 22 917 9768/ email: dinfante@ohchr.org) at the Office of the High Commissioner for Human Rights.

Yours sincerely,

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Mr. Dainius Pūras, (Lithuania) was appointed by the Human Rights Council as the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. He is a medical doctor with notable expertise on mental health, child health, and public health policies. He is a Professor and the Head of the Centre for Child Psychiatry Social Paediatrics at Vilnius University, and teaches at the Faculty of Medicine, Institute of International Relations and Political science and Faculty of Philosophy of Vilnius University, Lithuania.
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