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Submission to the Office of the High Commissioner for Human Rights, on human rights challenges in addressing and countering all aspects of the world drug problem

Introduction

The Open Society Foundations' (OSF) Drug Policy Program make this submission in response to the recent request from the Office of the High Commissioner for Human Rights, for input into your forthcoming report on "human rights challenges in addressing and countering all aspects of the world drug problem".

Founded by George Soros, OSF is the world's largest private funder of independent groups working for justice, democratic governance, and human rights. The foundations provide thousands of grants every year through a network of national and regional foundations and offices, funding a vast array of projects. This submission is based on experiences accumulated over thirty years of supporting organizations worldwide that document the harms of drug prohibition, develop and implement activities to mitigate these harms, and advocate for new approaches to drugs that put human rights, public health, and social support at their center. With more than US\$300 million invested, OSF is far and away the largest private donor to fund efforts to understand and address the harms of drug prohibition.

In this submission, we see the drug prohibitionist system and the alarming rise of authoritarianism as global interwoven challenges, with the two being inextricably related to economic exclusion and the erosion of trust in government and public policy. Illicit drugs continue to be a powerful imaginary for authoritarian practices, deployed to protect a population from a 'foreign' threat; labeled as an aid to 'crime' and 'terror'; used as justification to surveil, police, and purge an undesirable segment of the body politic; and exploited to militarize public security. At the same time, divestment from social services creates conditions of deepening despair (and the so-called "deaths of despair") and drives perverse/counter-intuitive support for authoritarian strong leaders. Today's demagogues and autocratic leaders use punitive drug policies to uphold and advance repressive systems that empower security forces, target minorities and the poor, silence dissent, and sideline human rights progress. It is no accident that programs for people who use drugs were among the first under attack in countries with illiberal rulers, reinforced by over-policing and militarization measures. In the face of these challenges, promoting drug policy reform serves as a bulwark against rising authoritarians as well as creeping and lingering forms of authoritarianism in our democracies. Reformed drug policies reduce overreliance on punitive institutions, include centering the voices of minorities, marginalized and affected

communities, and strengthen human rights, dignity, health, and individual freedoms.

Due to space constraints, this contribution focuses on two distinct problems at the extreme end of human rights violations in the name of drug control, where financial resources to enable alternatives are frequently limited or even decreasing, and political support to promote reforms is often viewed as controversial.

The death penalty for drug offences

Despite a clear international human rights standard that drug offences do not meet the threshold of the most serious crimes, the use of the death penalty for drug crimes appears to be on the rise. It also remains one of the authoritarian leaders' preferred tools for garnering popular support and quelling dissent.

In most jurisdictions where the death penalty for drugs operates, retentionist arguments normally revolve around two major points: deterrence effect and public opinion. If the death penalty was supposed to reduce drug crimes, we should have seen a drop in drug offenses a long time ago. Drug crimes in death penalty jurisdictions, on the other hand, show no signs of abating. Meanwhile, when it comes to public opinion, retentionist governments tend to justify their stance by citing high levels of public support for punitive measures. They typically rely on polls conducted by mainstream media, where the question is as simple as "yes" or "no." This simple binary question, however, obscures the complexities of the death penalty as well as drug-related issues.

OSF is of the view that so long as the belief for a drug free world continues to exist, retentionist states will always justify the death penalty for drug as a necessary measure to curb the illicit drug trade, despite the fact that there is no robust evidence that it actually deters crime.

As a result, efforts to abolish the death penalty for drug offenses should be combined with a drug policy reform agenda in which abolitionists can also articulate alternatives to punitive drug policies. A key component in this is an opposition to the logic of the prohibitionist regime. A commitment to end the death penalty for drug offenses should not coexist with a mindset that continues to demonize drugs and drug use. As long as the current paradigm of drug control maintains that drugs are an "evil" that the international community has a "duty to combat," there will always be justification for extreme policies and practices.

The crisis of opiate overdose death

Overdose deaths in the United States have surpassed 100,000 per year, or 300 per day, with Black men bearing the brunt of the burden. (They are now on par with Native Americans, whose death rates have long been high but remains unheeded). However, this is not only a North American issue. Today, highly potent synthetic opiates are becoming more common in a variety of narcotic substances, including heroin and other opiates, as well as stimulants such as cocaine, MDMA, and methamphetamine. Users may be opiate inexperienced, unfamiliar with overdose response techniques, or unconnected with harm reduction initiatives.

Global overdose fatality statistics is frequently sparse, particularly from the Global South. However, where countries have had minimal success in limiting fentanyl production, it just shifts elsewhere, while new “fentanyl-like” analogues emerge on a daily basis. In short, we may expect the existence of these and other drugs in illicit drug markets to spread around the world, with progressively fatal consequences. Meanwhile, punitive responses to this situation are reversing years of progress toward decriminalization and de-stigmatization of drug users, while also increasing the health and human rights effects for people who use drug and other groups such as palliative and pain patients. Drug prohibition is, in short, a vehicle of structural discrimination which has severely inflicted disproportionate health harms on racialized and impoverished communities—with the harms often multiplying and compounding.

The state obligation to the right to health requires member states to address the overdose crisis, which includes providing and increasing naloxone availability, with a focus on the generic variation, and ensuring it reaches the first responders, as well as expanding access to methadone and buprenorphine, including inside places of deprived of liberty. However, naloxone alone is insufficient. To effectively respond to the overdose crisis, member states and the broader international community should support the development of Overdose Prevention Centers, ensure drug checking and safe drug supply in their respective jurisdictions, and decriminalize drug use and possession for personal consumption.

Closing: the UN roles moving forward

Member States’ and the international community’s response to drug policy is, however, guided first and foremost by the UN drug conventions with national legal frameworks overwhelmingly continue to reflect the international prohibition mandate, although in recent years some countries and jurisdictions have begun rejecting this mandate for cannabis.

OSF believes that a significant overhaul of the UN drug control conventions, along with analogous reforms in national laws and policies, is required to ensure that the international and national frameworks can effectively combat systemic, structural and institutional violence and discrimination related to drug prohibition.

UN agencies and programs share considerable responsibility for the harms of drug prohibition. The UN Office on Drugs and Crime (UNODC), the International Narcotics Control Board (INCB) and other agencies have played important roles in establishing the prohibitionist regime in every corner of the globe, despite a growing body of evidence of the profound harms prohibition has caused in many countries and to many communities. The UNODC and INCB continue to wield significant influence with national and international decision makers on drug policy issues. As long as these agencies continue to subscribe to the prohibitionist paradigm, disproportionate harm to marginalized and racialized communities will persist.

It is therefore imperative that UN agencies play a leading role in helping countries in reducing and redressing the harms associated with drug prohibition and, assist member states in the design, implementation, and monitoring of alternative models. To start, UN agencies should use the 2018 UN Common Position on Drugs as common agenda towards ending the criminalization of drug use and

personal possession. While adopted four years ago, various UN institutions, most notably the UN Commission on Narcotic Drugs, continue to resist a human rights approach to drug policy. UN agencies should moreover work with member states to develop and implement tools to quantify the human rights consequences of drug prohibition. Finally, UN agencies should be at the forefront of developing alternative models of dealing with the potential health harms associated with drugs, sharing lessons of successful regulatory systems, and assisting member states in implementing these new models, grounded in human rights, health, and development.

A handwritten signature in purple ink, reading "K. Malinowska".

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