INTERNATIONAL GUIDELINES ON
Human Rights + Drug Policy

International Centre
on Human Rights
and Drug Policy

Human rights and drug control: Assessing implementation against a comprehensive normative framework

Written contribution to the Expert Panel established pursuant to CND resolution 68/6

International Centre on Human Rights and Drug Policy

The international drug control system is generally assessed through implementation of the three conventions and metrics related to supply reduction, demand reduction, and essential controlled medicines. The drug conventions operate alongside other international legal obligations, including human rights law. If implementation of the system is assessed within this wider normative framework, the question of success becomes more relevant to people's lives, including effects on human rights, health, equality, and development. The Panel's mandate offers an opportunity to consider how this comprehensive normative framework can be better reflected in the institutional arrangements, practices, and measures used to assess effective implementation. The table below provides the panel with a snapshot of the intersections between the drug conventions and human rights treaty norms.

Drug treaty obligations	**Human rights obligations**	**Questions for "strengthening implementation"**
Source: ***UN drugs conventions, 1961, 1971, 1988*** (Treaty & articles specified)	*Source*: ***Human rights treaties*** (Treaty & articles specified) ***International Guidelines on Human Rights and Drug Policy*** (Guideline sections specified)	Res 68/6: "develop clear, specific and actionable recommendations on how to strengthen the implementation of existing commitments and obligations under the three international drug control conventions, other relevant international instruments and international drug policy commitments, and to enhance the effectiveness of the international drug control system
Health		
Availability for medical and scientific purposes 1961 Convention, preamble and art. 4(c), limits controlled drugs to medical and scientific purposes; arts. 19-21 establish estimates and statistical controls intended to ensure availability while preventing diversion. 1971 Convention, arts. 5 and 9, regulates medical and scientific use and prescription of psychotropic substances.	*ICESCR* arts. 12 and 15(1)(b) Guidelines II.1 and II.1.3. States must ensure access to essential controlled medicines without discrimination and avoid unnecessary restrictions on their availability.	Does the institutional architecture create sufficient incentives and accountability to ensure adequate availability and access for medical and scientific purposes? How can access, equity and unmet medical need become core measures of implementation and system performance?

Health		
Treatment 1961 Convention, art. 38, and 1971 Convention, art. 20, require practicable measures for prevention, early identification, treatment, education, after-care, rehabilitation and social reintegration. 1988 Convention, art. 14(4), requires measures aimed at reducing illicit demand with a view to reducing human suffering.	ICESCR art. 12; ***ICCPR*** arts. 7, 9 and 17. Guidelines II.1 and II.1.2. States must make provide available, accessible, acceptable and good-quality (evidence-based) treatment, with informed consent and safeguards against abuse and arbitrary detention.	Does the international system adequately promote accessible, evidence-based and voluntary treatment, while identifying and addressing compulsory or abusive practices? How can treatment coverage, quality and outcomes become core measures of implementation and system performance?
Harm reduction The conventions do not prohibit harm reduction. 1961 Convention, art. 38, and 1971 Convention, art. 20, require measures addressing drug dependence and its health and social consequences. 1988 Convention, art. 14(4), links demand reduction measures to reducing human suffering.	ICESCR art. 12. Guidelines II.1.1. States must make evidence-based harm reduction information, services, goods and facilities available and accessible without discrimination	Is harm reduction sufficiently embedded within the institutions and standards of international drug control? If not, what is preventing this and how can it be resolved? How can preventable mortality and morbidity, as well as harm reduction coverage, become core measures of implementation and system performance?
Criminal justice and enforcement		
Personal possession, purchase or cultivation 1988 Convention, art. 3(2), requires States to establish specified conduct for personal consumption as offences, subject to constitutional principles and the basic concepts of their legal systems. Art. 3(4)(d) permits treatment, education, aftercare, rehabilitation or social reintegration as alternatives to or in addition to conviction or punishment.	ICCPR arts. 9, 17, 18, 27; ICESCR art. 12. Guidelines II.1, II.7 and II.9. Restrictions on privacy and liberty must be lawful, necessary and proportionate. Health services must remain accessible without discrimination.	Does the existence of an international norm encouraging criminalization of personal possession hinder the realization of the right to health? How should the international system assess whether different national approaches to drug use and possession for personal use advance or undermine health and human rights objectives? Is guidance from the INCB sufficiently clear that decriminalisation is possible within the existing treaty framework?
Offences and sanctions 1961 Convention, art. 36(1), and 1971 Convention, art. 22(1), require serious offences to be liable to adequate punishment. 1988 Convention, art. 3(4), requires sanctions that take account of the grave nature of art. 3(1) offences and permits alternatives in cases of a minor nature. The Conventions do not require the death penalty. 'More strict or severe measures' are, however, permitted.	ICCPR arts. 6, 7, 9, 14 and 26. ***UNCRC*** art. 40. Guidelines II.5-II.8. Arrest, detention, trial and punishment must comply with due process and must not be arbitrary, cruel or disproportionate. Juvenile justice standards must be upheld. In States retaining capital punishment, drug offences do not meet the 'most serious crimes' threshold for imposition of the death penalty.	How should the system identify and respond where drug control contributes to severe rights abuses? How should UNODC engage with States where drug offences result in death sentences or executions, or where serious rights abuses are documented in relation to drug enforcement? What is the role of INCB in identifying and calling attention to rights abuses in implementing the drugs conventions?

Development, environment and traditional uses		
Illicit cultivation, eradication and alternative development 1988 Convention, art. 14(2), requires measures to prevent illicit cultivation and eradicate illicit crops while respecting fundamental human rights, traditional licit uses and the environment. Art. 14(3)(a) provides for cooperation on integrated rural development leading to economically viable alternatives.	ICESCR arts. 11 and 12. Guidelines II.1.4 and II.3. States must protect health and an adequate standard of living and avoid measures that foreseeably undermine food, water, housing, livelihoods or a healthy environment.	Does the system give sufficient weight to sustainable development, food security, health and the environment relative to crop eradication measures? Should development and environmental outcomes become core measures of implementation and system performance? Are the UNODC and INCB sufficiently clear on the harms caused by forced eradication and aerial fumigation?
Indigenous peoples and traditional uses 1961 Convention, art. 49, permitted transitional reservations for specified traditional practices subject to time limits. 1988 Convention, art. 14(2), requires due account of traditional licit uses where there is historic evidence and respect for fundamental human rights.	ICCPR art. 27; ICESCR art. 15; ***UNDRIP***, art 31. Guidelines III.4. States must respect Indigenous peoples' rights to culture, traditional medicines, lands and resources, participation and, where applicable, free, prior and informed consent.	How should the international drug control system address tensions between older drug treaty obligations and contemporary international standards concerning Indigenous peoples' rights? Are existing mechanisms capable of accommodating Indigenous cultural, spiritual, religious and medicinal practices involving controlled plants?
Women & children		
Women. The conventions contain few gender-specific requirements. Their provisions on offences, sanctions, treatment and alternatives apply to women, including 1961 Convention arts. 36 and 38; 1971 Convention arts. 20 and 22; and 1988 Convention art. 3(4).	***CEDAW*** arts. 2, 12, 14 and 15; ICCPR art. 26; ICESCR arts. 11 and 12. Guidelines III.2. States must prevent discrimination and ensure gender-sensitive health, social and criminal justice responses.	Does the system adequately identify and respond to the gendered health, social and criminal justice effects of drug control? Should gender-disaggregated outcomes become standard measures of implementation and system performance?
Children. 1988 Convention, art. 3(5)(f), identifies victimisation or use of minors in the commission of drug offences as a potentially aggravating circumstance. The conventions also require prevention and demand reduction measures. Beyond this the conventions make no substantive references to children.	UNCRC art. 33, and the remainder of the Convention. Guidelines III.1. States must protect children from illicit drug use and exploitation while giving primary consideration to their best interests, while ensuring access to youth-friendly services, not treating children who use drugs or are exploited as criminals, and using detention only as a last resort.	Is the protection of children within international drug control too narrowly centred on preventing drug use? How should the system assess the effects of drug policy on children's health, development, education, family life and exposure to criminal justice?

System-wide implementation and review		
Monitoring and reporting 1961 Convention, arts. 18-20; 1971 Convention, art. 16; and 1988 Convention, art. 20, require States to provide information on the operation of the conventions, including specified statistical and implementation information.	Human rights treaties require States to monitor implementation, identify discriminatory or harmful effects and take corrective measures. Guidelines I.3 and IV.1-IV.2 call for disaggregated data, human rights review and impact assessment.	Does the information collated by UNODC and INCB allow the system to assess outcomes for human rights? What realignment of institutional responsibilities is needed to centre human rights in global drug control? Should CND have a standing item on human rights? Should INCB and UNODC include a section on human rights in their flagship reports? Should the CND or Human Rights Council appoint a *Special Rapporteur on the human rights consequences of countering the world drug problem?*