

# Policy principle 3:

## Drug policies should be undertaken in full compliance with international human rights law

Drug control bodies and governments are bound by the overarching obligations created under articles 55 and 56 of the 1945 UN Charter, which promote universal respect for, and observance of, human rights and fundamental freedoms.<sup>16</sup> Human rights stem from the dignity and worth of the individual.<sup>17</sup> They are universal, interdependent, interrelated, indivisible and inalienable,<sup>18</sup> which means that they cannot be taken away from a person because they might be growing, transporting, dealing or using internationally controlled drugs, or living with HIV. As the UN High Commissioner for Human Rights, Navanethem Pillay proclaimed in 2009: 'individuals who use drugs do not forfeit their human rights.'<sup>19</sup>

Human rights are not only a statement of principle – states also have binding obligations under international law to respect, protect and fulfil them.<sup>20</sup> This means that governments should not violate the human rights of their citizens (including people who are using and/or growing drugs) nor allow others to do so. They should also adopt appropriate legislative, constitutional, budgetary and other measures to fully protect and realise the human rights of all their citizens.

And yet, governments and law enforcement authorities have paid insufficient attention to fundamental rights and freedoms in the design and implementation of national drug policies (see Table 1 below). UN human rights agencies have continuously raised concerns on the human rights abuses that continue to proliferate under the auspices of drug policy.<sup>21</sup> In 2015, the Office of the High Commissioner for Human Rights published a report which offers a solid analysis of the negative effects of drug control on the fulfilment of human rights.<sup>22</sup> Moreover, the Human Rights Council hosted a panel discussion on the human rights impact of the world drug problem at its 30<sup>th</sup> Regular Session, to highlight key areas of concern and opportunities for reform.<sup>23</sup> Both are significant steps towards addressing the human rights violations that are taking place in the name of drug policy.

There is little doubt that human rights are now recognised as an issue that can no longer be ignored in any consideration of drug control policies. A paradigm shift is needed, whereby human rights law is recognised as a core element of the legal framework for drug policy.<sup>24</sup>



Credit: Sven Torfinn/Panos, Open Society Foundations

**Table 1. Violations of human rights in the name of drug control**

Human right	International human rights convention	Violations in the name of drug control
<b>Right to life</b>	<ul style="list-style-type: none"> <li>Article 4 of the Universal Declaration of Human Rights, 1948</li> <li>Article 6 of the International Covenant on Civil and Political Rights, 1966</li> </ul>	<ul style="list-style-type: none"> <li>Use of the death penalty for drug offences<sup>25</sup></li> <li>Extra-judicial killings by law enforcement agencies<sup>26</sup></li> </ul>
<b>Right to the highest attainable standard of physical and mental health</b>	<ul style="list-style-type: none"> <li>Constitution of the World Health Organisation, 1946</li> <li>Article 25 of the Universal Declaration of Human Rights, 1948</li> <li>Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966</li> </ul>	<ul style="list-style-type: none"> <li>Restricted access to essential medicines, including those for pain relief<sup>27</sup></li> <li>Restricted access to humane and evidence-based drug dependence treatment, including opioid substitution therapy<sup>28</sup></li> <li>Restricted access to harm reduction services that would prevent overdoses and the transmission of blood-borne infections such as HIV and hepatitis C<sup>29</sup></li> </ul>
<b>Right not to be subjected to arbitrary arrest and detention</b>	<ul style="list-style-type: none"> <li>Article 9 of the Universal Declaration of Human Rights, 1948</li> <li>Article 9 of the International Covenant on Civil and Political Rights, 1966</li> </ul>	<ul style="list-style-type: none"> <li>Targeting of people who use drugs by law enforcement officers to meet arrest quotas<sup>30</sup></li> <li>Arbitrary detention of people who use drugs<sup>31</sup></li> <li>Police harassment and sexual abuse of people who use drugs<sup>32</sup></li> </ul>
<b>Right to a fair trial</b>	<ul style="list-style-type: none"> <li>Article 10 of the Universal Declaration of Human Rights, 1948</li> <li>Article 6 of the European Convention of Human Rights, 1950</li> </ul>	<ul style="list-style-type: none"> <li>Denial of parole, pardon, amnesty or alternatives to incarceration for people convicted of a drug crime<sup>33</sup></li> <li>Use of pre-trial detention, mandatory sentencing and disproportionate penalties against people involved in minor drug offences<sup>34</sup></li> <li>Referral to compulsory centres for drug users without due process or trial<sup>35</sup></li> </ul>
<b>Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment</b>	<ul style="list-style-type: none"> <li>Article 5 of the Universal Declaration of Human Rights, 1948</li> <li>Article 7 of the International Covenant on Civil and Political Rights, 1966</li> <li>Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975</li> <li>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984</li> </ul>	<ul style="list-style-type: none"> <li>Abuses in compulsory centres for drug users<sup>36</sup></li> <li>Use of corporal punishment for drug offenders, including caning, flogging, lashing and whipping<sup>37</sup></li> </ul>

*Continued overleaf*

<b>Right not to be held in slavery</b>	<ul style="list-style-type: none"> <li>• Article 4 of the Universal Declaration of Human Rights, 1948</li> <li>• Article 8 of the International Covenant on Civil and Political Rights, 1966</li> </ul>	<ul style="list-style-type: none"> <li>• Use of forced labour in the name of drug treatment<sup>38</sup></li> </ul>
<b>Social and economic rights</b>	<ul style="list-style-type: none"> <li>• Article 22 (and next) of the Universal Declaration of Human Rights, 1948</li> <li>• Articles 6 and 7 (and next) of the International Covenant on Economic, Social and Cultural Rights, 1966</li> <li>• Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of forced crop eradication campaigns, leaving many farmers with no means of subsistence<sup>39</sup></li> <li>• Destruction of land, food crops and water supplies due to aerial spraying<sup>40</sup></li> <li>• Denial of the right of indigenous groups to use controlled substances for traditional and religious purposes<sup>41</sup></li> </ul>
<b>Right to be free from discrimination</b>	<ul style="list-style-type: none"> <li>• Article 7 of the Universal Declaration of Human Rights, 1948</li> <li>• Article 26 of the International Covenant on Civil and Political Rights, 1966</li> <li>• International Convention on the Elimination of All Forms of Racial Discrimination, 1965</li> <li>• Convention on the Elimination of All Forms of Discrimination Against Women, 1979</li> </ul>	<ul style="list-style-type: none"> <li>• Discriminatory application of drug control laws, notably towards minority ethnic groups,<sup>42</sup> indigenous people, young people and women<sup>43</sup></li> </ul>
<b>Right to privacy<sup>44</sup></b>	<ul style="list-style-type: none"> <li>• Article 12 of the Universal Declaration on Human Rights, 1948</li> </ul>	<ul style="list-style-type: none"> <li>• Practice of stopping and inspecting people, including school children, suspected of carrying drugs<sup>45</sup></li> <li>• Forced urine testing<sup>46</sup></li> <li>• Practice of including people who use drugs in official government registries<sup>47</sup></li> <li>• Sharing of confidential medical information of a person caught for drug use or undergoing drug dependence treatment with the police<sup>48</sup></li> </ul>
<b>Right to be protected from illicit drug use</b>	<ul style="list-style-type: none"> <li>• Article 33 of the UN Convention on the Rights of the Child, 1989</li> </ul>	<ul style="list-style-type: none"> <li>• Denial of harm reduction services targeted at young people<sup>49</sup></li> <li>• Use of ineffective and stigmatising drug prevention measures<sup>50</sup></li> </ul>