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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

**Follow-up to and implementation of the Vienna
Declaration and Programme of Action**

Outcome of the panel discussion on the impact of the world drug problem on the enjoyment of human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 28/28, and provides a summary of the panel discussion on the impact of the world drug problem on the enjoyment of human rights, held on 28 September 2015, during the thirtieth session of the Council.



I. Introduction

1. The Human Rights Council, in its resolution 28/28, decided to convene a panel discussion at its thirtieth session on the impact of the world drug problem on the enjoyment of human rights, informed by the findings contained in the report of the United Nations High Commissioner for Human Rights on the study on the impact of the world drug problem on the enjoyment of human rights (A/HRC/30/65), and to have a constructive and inclusive dialogue on the issue with relevant stakeholders, including specialized United Nations agencies and civil society, and with the participation of the Commission on Narcotic Drugs. The Council held the panel discussion on 28 September 2015, at its thirtieth session.

2. In its resolution 28/28, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on the panel discussion in the form of a summary. The present report was prepared pursuant to that request.

3. The Deputy High Commissioner opened the panel discussion, which was moderated by the former President of Switzerland, Ruth Dreifuss. The panellists were Javier Andres Florez, Director of Drug Policy at the Ministry of Justice of Colombia; Ann Fordham, Executive Director of the International Drug Policy Consortium; Mohammad-Mahmoud Ould Mohamedou, Deputy Director of the Geneva Centre for Security Policy, Professor at the Graduate Institute in Geneva and Commissioner on the West Africa Commission on Drugs; Shekhar Saxena, Director of the Department of Mental Health and Substance Abuse of the World Health Organization; and Aldo Lale-Demoz, Deputy Executive Director of the United Nations Office on Drugs and Crime (UNODC). In addition, Arthayudh Srisamoot, Ambassador of Thailand to the United Nations Office at Vienna and Chair of the fifty-eighth session of the Commission on Narcotic Drugs, participated in the panel discussion.

II. Opening statement

4. In her opening statement, the Deputy High Commissioner referred to the report of the High Commissioner on the study of the impact of the world drug problem on human rights, which included five main areas: the right to health; rights relating to criminal justice; the prohibition of discrimination, in particular against ethnic minorities and women; the rights of the child; and the rights of indigenous peoples.

5. Concerning the right to health, the Deputy High Commissioner noted that, in its resolution 12/27, the Human Rights Council had previously recognized the need for harm-reduction programmes and that such measures, including syringe exchange programmes and opioid substitution therapy, were available in slightly less than half of all countries worldwide. Harm-reduction measures help to reduce substantially HIV infections and the transmission of other blood-borne viruses, and she encouraged States to embrace harm-reduction approaches. She added that this was particularly the case in prisons, where access to harm reduction was far more restricted and urgently needed. She noted that access to essential medicines under international control was far too limited, particularly in developing countries. It was often restricted for fear that they would be diverted from legitimate medical use to illicit purposes.

6. The Deputy High Commissioner recalled that the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health had already called for decriminalization of the possession and use of drugs in his 2010 report (A/65/255), and that the World Health Organization and the Joint United Nations

Programme on HIV/AIDS (UNAIDS) had taken similar positions. That was because the criminalization of the possession and use of drugs had been shown to cause significant obstacles to the right to health. Concerning the death penalty for drug-related offences, it was estimated that 33 countries or territories continued to impose the death penalty for such offences, resulting in approximately 1,000 executions annually. In some States, drug-related offences accounted for the majority of executions carried out. However, according to the findings of the Human Rights Committee, the Secretary-General, the High Commissioner for Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, drug-related offences did not meet the threshold of the “most serious crimes”.

7. The Deputy High Commissioner noted that, in some States, persons suspected of having committed drug-related offences were particularly at risk of arbitrary detention and that drug users may be subjected to torture or ill-treatment in custody to obtain a confession or other information. Convictions for drug-related offences also often resulted in disproportionately harsh sentences for relatively minor offences and adversely affects a range of rights or entitlement to benefits, including custody of children or visitation rights, access to public housing, food assistance, student financial aid or eligibility for certain types of employment. Consideration should be given to alternatives to prosecution and imprisonment of persons for minor, non-violent, drug-related offences. She observed that ethnic minorities and women could be particularly subject to discrimination in law enforcement efforts, particularly for the use or possession of drugs or for their role as “micro-distributors”.

8. Concerning the rights of children, the Deputy High Commissioner stated that the focus should be on prevention and children should receive accurate and objective information about drugs. Children should not be subject to criminal prosecution. Instead, responses should focus on health and education, treatment, including harm-reduction measures, and social reintegration. As for indigenous peoples, she noted that they had the right to follow their traditional, cultural and religious practices and, where drug use was part of these practices, it should in principle be permitted.

9. The Deputy High Commissioner expressed hope that human rights would be addressed in a constructive and specific manner in the outcome documents of the special session of the General Assembly on the world drug problem, in order to ensure the protection of human rights in State law and practice in the future.

III. Statements by the panellists

10. The panel moderator said that it was important to develop far-reaching cooperation within the United Nations family and to analyse the complexity of drug use. The aim of the panel was to understand whether relevant international conventions were being implemented and the role of policies adopted in this area. The contribution of the Human Rights Council and OHCHR would allow the setting-up of a general framework to provide consistency and show the path towards greater consistency and effectiveness of those policies. This was important because some countries had adopted measures that had fallen short of respect for human rights, including the right to health for drug users. Also, by now, it was obvious that national and international drug policies could have unintended consequences. She added that the High Commissioner’s report had drawn attention to the consequences of drug use on the most vulnerable, including women and children.

11. Mr. Florez welcomed the study by OHCHR, which referred to some of the undesirable consequences of drug control policies. In the name of the fight against drugs,

numerous human rights had been violated, and yet nothing could justify the stigmatization and exclusion of drug users, discrimination against minorities, torture or the death penalty. Drug policies should not be assessed on their good intentions, but on their effectiveness. Colombia found it unacceptable for hundreds of thousands of individuals to languish in prisons on life sentences or even death sentences for drug-related crimes, or for forced labour to be imposed on drug users. Women and children convicted of drug-related offences in particular suffered from severe sentences.

12. The devastating effect of drug trafficking in Colombia had also stoked the armed conflict and sapped resources that could have otherwise been invested in health, education and development. Internationally, Colombia had proposed an agenda aimed at eliminating the death penalty, decriminalizing drug use, adopting harm-reduction measures and implementing alternative measures to imprisonment. It was important to recognize in the fight against drugs that the international system could not continue using the same policies to address different realities; the problems had changed and it was not possible to use a universal approach with a focus on punishment. Public health, development and human rights could not be placed on the sidelines in the fight against drugs.

13. The Executive Director of the International Drug Policy Consortium said that the upcoming special session of the General Assembly on drugs would be an important opportunity to have an open and honest debate regarding the challenges and shortcomings of the global response to drug control and to acknowledge the widespread and devastating consequences of punitive laws and repressive law enforcement practices on human rights. She said it was encouraging that the links between drug policies and human rights were being increasingly addressed by the United Nations, but it was deeply concerning that the right to life was frequently compromised by aggressive supply reduction activities that had led to death sentences for drug offenders. The death penalty may under international law be applied only for the most serious crimes, and drug offences did not fall into that category. A number of States nevertheless executed drug offenders in ever-increasing numbers, while others had sought to reintroduce capital punishment for drug crimes. There were also serious concerns about extrajudicial, summary or arbitrary executions carried out in the name of drug control efforts.

14. Ms. Fordham added that the negative impact of the criminalization of drug use continued to be of grave concern. Individuals had a right to gain access to life-saving health services without fear of punishment or discrimination, but the fear of criminal sanctions had driven people who use drugs away from life-saving harm-reduction services, leading to avoidable infection and premature death from HIV and hepatitis C. Such criminalization also served to justify harsh measures, including torture, the denial of due process and compulsory placement in drug detention centres for the supposed treatment and rehabilitation of people who used drugs. Finally, the burden of highly disproportionate sentences for drug offences was largely borne by vulnerable groups, including women and ethnic minorities. She added that incarceration fuelled poverty and social exclusion. The Council should create a special procedure on drug policies and human rights, and request other special procedure mandate holders to produce a comprehensive joint report on the impact of drug policies on their mandates. It should also consider designating a day, to be observed annually, for discussion on the impact of the world drug problem on human rights.

15. Mr. Mohamedou said that States with a low level of socioeconomic development were particularly vulnerable to the drug problem. In those States, drug policies were generally lacking or not as elaborate as they should be. Drug-related problems had an impact on governance, the rule of law and human rights, and drug-related issues were understudied and not addressed sufficiently. There were new patterns of complexity that called for more research. Whereas previous initiatives had focused on supply reduction, the

West Africa Commission on Drugs, launched in 2012, had taken into account local demand.

16. He highlighted the macroeconomic impact of drug production on society and that the traditional approach had focused on alternatives to illegal production by farmers. He explained that it was also important to focus on the impact on individuals and noted that the majority of those who produced drugs were poor and did not become rich from that production. There was a need to identify other employment opportunities for such people. Those who used drugs were socially stigmatized, had low incomes and came from deprived families. Drug policies focusing on wide-reaching arrests and harsh sentences exacerbated the issue and drove offenders further to the margins of society. Drug enforcement efforts disproportionately affected the poor and in particular ethnic minorities and women. He noted that female drug users could face the loss of custody of their children and were sometimes forced to undergo abortions. Indigenous communities also suffered from misguided drug policies. He concluded that disregard for human rights had led to drug policies with unintended adverse consequences and that new evidenced-based policies were needed.

17. Mr. Saxena said that drug users and people with drug-use disorders experienced discrimination in gaining access to appropriate health-care services and suffered from a lack of adequate treatment. They faced significant stigma, prejudice and non-professional conduct in health-care settings and suffered from a general lack of information and training of health-care professionals in meeting their health-care needs. Drug-use disorders were health conditions associated with substantial mortality, morbidity and social problems and were both preventable and treatable. The right to health must be extended to all population groups, including the vulnerable and marginalized, and also to people deprived of their liberty.

18. Harm-reduction interventions, such as needle exchange programmes for injecting drug users or outreach services aimed at prevention, had proven to be effective in the prevention of drug-related blood-borne infections. People with drug dependence should not be punished for their drug-taking behaviour, which was a result of their disease, and as such should not be treated as criminals. Female drug users often did not receive appropriate care or support for their drug use disorder, in particular during pregnancy, because of stigma, lack of timely referrals and discriminatory attitudes of health professionals and society at large. He added that children must benefit from policies, programmes and services to prevent and reduce substance use and from measures to prevent their involvement in illicit production and trafficking.

19. Mr. Saxena recalled that it was sometimes said that the United Nations drug conventions were an obstacle to achieving the right to health. He observed that the ultimate goal of the drug conventions was to protect the health and welfare of humankind and there was nothing in those conventions that requested Member States to introduce policies that violated human rights. The conventions envisaged the use of measures to reduce the health and social harm due to drug use. In conclusion, he stressed that, just because a person was a drug user or had a drug-use disorder, he or she should not lose the right to appropriate timely and effective health care.

20. Mr. Lale-Demoz said there was a need to recognize that drug use and associated health conditions, such as HIV, hepatitis C and drug overdose, were public health issues that had to be addressed by qualified and trained personnel. Drug use required treatment, not punishment, which led to violations of the drug user's right to health. Member States should use alternatives to imprisonment for drug-related offences of a non-violent nature. Imprisonment in such cases was ineffective, led to prison overcrowding and exacerbated the transmission of HIV and other diseases. Alternatives to imprisonment increased recovery and reduced recidivism.

21. The Deputy Executive Director of UNODC emphasized that attention had to be paid to the particular vulnerability of female drug offenders. Women in prison for drug-related offenses were often recruited or coerced to perform low-level and high-risk tasks. Alternatives to imprisonment were particularly appropriate for women charged with minor drug-related offences. Explicit measures were also required to protect children from the illicit use of drugs and to prevent the use of children in illicit drug production and trafficking. More protection by health, child protection and justice systems was required to promote the rights of children with substance abuse problems. UNODC also promoted the provision of free legal advice to those who had no means to afford their criminal defence and the rational use of controlled medicines that was essential to the relief of pain related to health conditions. Finally, it opposed the death penalty in all circumstances and encouraged every country to establish a moratorium on the use of the death penalty. The Deputy Executive Director added that UNODC strongly advises States that retain capital punishment not to impose it for drug-related offences, as they are not considered to fall under the category of “most serious crimes”.

22. Mr. Srisamoot said that full compliance with human rights law and with the international drug control framework went hand-in-hand. At its session in March 2015, the Commission on Narcotic Drugs emphasized the importance of human rights in a number of resolutions on various topics, such as evidence-based treatment and care for children and young people with substance use disorders, the quality and the reliability of drug analysis results, and alternative development. Respect for human rights was identified as one of the cross-cutting issues in preparations for the special session of the General Assembly on the world drug problem, which included drugs and human rights, young people, women, children and communities.

23. The health and welfare of humankind should be protected against risks associated with drug use through the implementation of science-based and health-oriented prevention, treatment, social rehabilitation and reintegration programmes. It was necessary to ensure access to treatment for people who used drugs, including those in prisons. Children were to be protected from the illicit use of drugs and psychotic substances and should not be used in the illicit production and trafficking of drugs. It was also the responsibility of the international community to address the situation in which three quarters of the world’s population lived in countries where access to controlled medicines for pain relief was low or non-existent. Drug-related organized criminal activities and violence undermined legitimate economies, stability and security of people, he concluded.

IV. Summary of the discussion

24. During the discussion, contributions were made by the representatives of Switzerland (on behalf of 16 States), Saudi Arabia (on behalf of the Arab Group), the European Union, Ecuador (on behalf of the Community of Latin American and Caribbean States), Uruguay (on behalf of the Union of South American Nations), Pakistan (on behalf of the Organization of Islamic Cooperation), Algeria (on behalf of the African Group), Colombia (on behalf of the core group of 10 countries that sponsored Human Rights Council resolution 28/28), Albania, Australia, Austria, the Plurinational State of Bolivia, China, El Salvador, Egypt, France, Greece, India, Kyrgyzstan, Mexico, Nicaragua, Paraguay, Portugal, Sierra Leone, Singapore, Sweden and Tunisia. From intergovernmental organizations, contributions were made by the Council of Europe and UNAIDS.

25. Contributions were also made by representatives of non-governmental organizations, including the International Lesbian and Gay Association, in a joint statement with the International Service for Human Rights; Harm Reduction International, in a joint statement with Human Rights Watch; Centro Regional de Derechos Humanos y Justicia de Genero, in

a joint statement with International Service for Human Rights, Centro de Estudios Legales y Sociales and Intercambios Asociación Civil; Washington Office on Latin America, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Asociación Civil and Harm Reduction International; Penal Reform International; and International Educational Development.¹

A. General observations

26. A number of States noted that the world drug problem constituted a challenge to safety, national security, socioeconomic and political stability, the health and well-being of populations and sustainable development. These challenges were compounded because of the illicit activities of criminal organizations connected to drug trafficking. Others underlined the negative impact of drugs and drug trafficking on peace, human rights, stability and security. One State commented that it was important to address the drug problem through a holistic and human rights-based approach, protecting the human rights of all, including drug offenders. Another State noted that, while drug use was harmful, the means to address it were not always equally effective, proportionate or legitimate. Some States said that the drug problem was a shared challenge and cutting both supply and demand needed to be reinforced. One State stressed that the current international legal framework for drug control should be maintained and that it firmly opposed the legalization of drugs. Another State called for profound changes to the current system. States welcomed the special session of the General Assembly on the world drug problem and called for strengthened international cooperation. One State commented that the special session should formulate drug policies in close cooperation with those affected and focus on how the important element of prevention could be integrated.

27. Some States underlined that drugs were a major problem for the African continent, which was a major transit area. African countries were increasingly concerned about the interconnectedness between narcotics traffic, organized crime and terrorism. One State noted that, at gateways for drug trafficking into Africa, traffickers were paid in drugs, which had led to increased drug use by local populations.

28. An intergovernmental organization underlined the importance of human rights in addressing drug use and that the unintended social and economic consequences of drug policies needed to be studied. Without advancing conclusions, a number of questions were raised, including on the State's responsibility to take steps to avoid preventable deaths and whether there was evidence that different drug policies could prevent undesirable situations. A number of non-governmental organizations called for the Human Rights Council to keep the issue of the world drug problem and human rights on its agenda, and further called for the creation of a special rapporteur mandated to deal with this issue.

B. Right to health

29. A number of States noted the negative impact of drugs and drug trafficking on public health, safety and security but underlined the necessity to combat drugs through a comprehensive and human rights-based approach. One State said that there should be an increased focus worldwide on public health, prevention, treatment and care, and on economic, social and cultural strategies.

¹ Statements not delivered owing to lack of time but provided to the Secretariat can be consulted on the extranet of the Human Rights Council, available from www.ohchr.org/EN/HRBodies/HRC/Pages/HRCRegistration.aspx.

30. Some States stressed that the right to health was key and had to be guaranteed for all without discrimination, including for drug users, and underlined that public health strategies, including harm-reduction programmes, had led to a reduction in HIV transmission. One State commented that it did not support harm reduction because it suggested that there was a safe way to use controlled drugs. One intergovernmental organization noted that more than 1.5 million people who injected drugs lived with HIV and called for the decriminalization of drug use in order to reach out to drug users and provide them with the necessary health services. Some non-governmental organizations noted that people who injected drugs had a much higher risk of contracting HIV and regretted that efforts did not focus on the protection of drug users and their access to health.

31. Some States noted that policies should focus on the rights of individuals and their access to treatment and social services. The importance of ensuring access to health services, including safe and affordable medicines, for drug users was also emphasized. One State indicated that an approach to drug policy based on public health should not lead to a more permissive approach to drug control. One State appealed for more focus on science and evidence in formulating approaches to drug policy, rather than using ideological or political arguments as the basis for debate. A number of States commented that it was important to remove barriers to gaining access to controlled medicines.

C. Criminal justice issues

32. A number of States stressed that the death penalty should be abolished for drug-related offences, while others emphasized that their goal was the universal abolition of the death penalty in all circumstances, including for drug users. One State, however, reiterated that the death penalty for drug-related offences was an effective deterrent in its commitment to adopt a zero-tolerance approach and that it respected the human rights of all, including drug abusers. One non-governmental organization voiced concern about the large number of executions for drug-related crimes in the Islamic Republic of Iran.

33. Access to justice, the importance of proportionality in sentencing and alternatives to imprisonment were highlighted by a number of States. One State said that, while drugs remained a threat to the well-being of individuals and security, addiction to drugs was an illness and should not be treated as a criminal offence. One non-governmental organization said that the enforcement of overly punitive laws for drug offences had not proven effective in curbing the production, trafficking and consumption of illicit substances. One non-governmental organization regretted the expanded use of the military in combating drug trafficking in Mexico.

D. Non-discrimination and specifically affected groups

34. A number of States emphasized that drug policies needed to be implemented in a non-discriminatory way. One State underlined that it was making great efforts to strengthen its drug policies, while at the same time taking into account the rights of indigenous peoples and their use of coca leaves. A number of non-governmental organizations stated that drug control policies could lead to harsh outcomes for women, children, indigenous peoples and human rights defenders, all of whom were particularly vulnerable. Other non-governmental organizations highlighted the vulnerability of lesbian, gay, bisexual and transgender persons to drug-related problems, indicating that they faced discrimination that led to lack of access to health services.

V. Conclusions

35. In his concluding remarks and responses to questions raised during the discussion, Mr. Florez stated that Colombia had been actively involved in preparations for the special session of the General Assembly on the world drug problem and that different approaches to drug policy may be needed. Colombia was working in particular on the preparatory process in Latin America and had consulted with a wide range of States and other stakeholders with an interest in redefining drug policy. He added that an evidence-based approach to drug policy was supported by Colombia.

36. Ms. Fordham noted that one study had shown that drug use was not significantly affected by the policy framework but that the harm caused by drugs and violations of the human rights of drug users could be positively addressed by policy choices. She stated that global drug policy was currently focused on harsh and punitive measures and that it was important for the special session of the General Assembly to ensure that global drug policy responses would be based on human rights, public health and development principles in the future. It was important that the special session be an open debate that would consider all options, for different parts of the United Nations system to make their voices heard and for consideration to be given to the views of civil society. She recommended that an expert advisory group be established to promote coherence within the United Nations system on drug policy.

37. Mr. Mohamedou stated that, when engaging with States in West Africa, it was important to avoid the militarization of drug policy and counter-trafficking responses. Addressing drug use as a public health issue and not as a criminal justice issue could be done by balancing public health and security needs. He added that public health responses should include harm-reduction programmes. He noted that drug trafficking networks in many regions had established footholds by exploiting already weak governance and criminal justice systems.

38. Mr. Saxena welcomed the emphasis in the discussion on the public health dimension of the drug problem and said that clear guidelines were needed on how to assist States. He emphasized that drug users should receive evidence-based treatment. He noted that opioid substitution therapy was an important health response and that making available clean syringes would make a significant difference in improving the health of injecting drug users. He added that prevention was extremely important in improving the living conditions of people.

39. The Deputy Executive Director of UNODC stressed the need to ensure the provision of health care, alternatives to incarceration and free legal aid to drug users. Judges should be able to take into account extenuating circumstances when hearing cases involving drug users. He added that access to controlled medicines should be a major goal of drug policy. In response to a question, he noted that the Islamic Republic of Iran had a new country programme with a focus on prevention and harm reduction in prisons.

40. In her concluding remarks, the panel moderator noted that regional differences had been highlighted by some delegations when it came to designing drug policies. She added that all countries were part of a chain of drug production, trafficking and consumption and thus shared responsibilities. She noted that many delegations wanted to evaluate measures to counter the drug problem and wished to implement specific measures that would result in tangible outcomes. Scientific evaluation was important and the scientific community also needed to be closely involved in policymaking. She added that pilot projects needed to be monitored to see whether

they were mindful of human rights. It was also important to monitor the proportionality of sentences for drug-related crimes and efforts to limit the spread of diseases by drug users. She called for flexibility in the application of the conventions on drugs. She also stated that the participation of civil society was essential to ensure a better protection of human rights in drug policies and noted that it was especially important for those who were directly affected by such policies to be involved.
