

# THE IMPACTS OF DRUG POLICIES ON CHILDREN AND YOUNG PEOPLE



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*As member states of the United Nations take stock of the drug control system, a number of debates have emerged among governments about how to balance international drug laws with human rights, public health, alternatives to incarceration, and experimentation with regulation.*

*This series intends to provide a primer on why governments must not turn a blind eye to pressing human rights and public health impacts of current drug policies.*



## CHILDREN & YOUNG PEOPLE

Children and young people are appropriately at the forefront of public and political concerns about drugs and the drug trade. But all too often the threat to children and young people presented by drugs is stated without sufficient scrutiny of the appropriateness and effectiveness of the measures adopted to protect them.

## INTRODUCTION

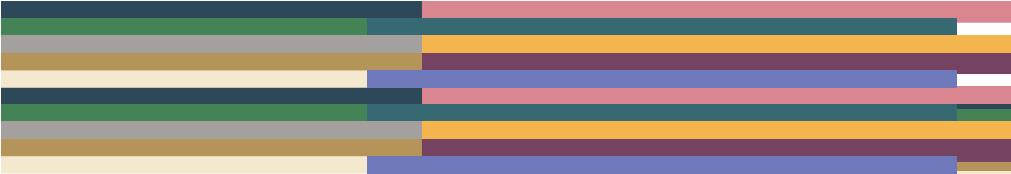
**Children and young people<sup>1</sup> are appropriately at the forefront of public and political concerns about drugs and the drug trade. Nobody wants to see children and young people harmed by drug use, whether it is their own, a parent's, or a family member's.**

Drug use in early youth can affect development, and children and young people who use drugs are at higher risk of health harms. It is well known, moreover, that initiation of drug use in adolescence can lead to longer-term use and dependence more readily than initiation in adulthood. As such, there is considerable agreement on the importance of prevention and appropriate targeted interventions for children and young people who use drugs. All are agreed, moreover, that the exploitation of children by organized criminal groups in the drug trade is to be fought, and that drug-related violence is enormously damaging for children and young people.

All too often, however, the threat to children and young people presented by drugs is merely stated without sufficient scrutiny of the appropriateness and effectiveness of the measures adopted to protect them, hindering accountable evaluation and policy deliberation. While there are many positive programs and guidelines from which to learn, it cannot be overlooked that many strategies to counter the “world drug problem” have had documented negative effects for children and young people. Important gaps in our understanding of drug use, drug-related harms, and children's involvement in the drug trade must also be recognized.

The first section (p. 3) of this brief considers some of the existing international standards relating to children that are applicable to drug policies, yet have been underutilized in international drug policy debates. The second (p. 6) looks briefly at available data on drug use, drug-related harms, and children's involvement in the drug trade. The third part (p. 9) provides an overview of some of the ways in which children and young people are harmed

<sup>1</sup> In this paper, “children and young people” refers to people under the age of 18 years, i.e. those to whom the UN Convention on the Rights of the Child applies.



by drug control efforts, from the extreme to the commonplace. Finally, part four (p. 18) sets out some recommendations for a meaningful focus on children and young people at the United Nations General Assembly Special Session (UNGASS) and beyond.

## “APPROPRIATE MEASURES”: INTERNATIONAL STANDARDS ON CHILDREN, YOUNG PEOPLE, AND DRUG CONTROL

**A close look at the UN drugs conventions of 1961, 1971, and 1988 shows how little of a focus there was on children during the drafting processes.**

Only the 1988 drug trafficking convention specifically refers to children or minors. Neither of the two relevant clauses refers to specific measures to address drug use among children or involvement in the drug trade beyond establishing the victimization of children or the commission of certain offences in the vicinity of children as “particularly serious” crimes.<sup>2</sup> Aside from various reaffirmations of commitment to focus on youth<sup>3</sup> and a recognition of the need for targeted services for children and adolescents,<sup>4</sup> the 2009 UN Political Declaration and Plan of Action on drugs does not adequately address specific issues facing children and young people in relation to drug use. Nor does it adequately address children’s and young people’s involvement in the drug trade.

Despite these gaps there is a wealth of international standards and guidelines that may shape policy development. The UN Convention on the Rights of the Child (CRC) provides an important lens through which to consider such standards and through which to interpret relevant provisions of the drugs conventions. Binding on 194 states parties, the CRC includes a specific provision (article 33) relating to drug use and the drug trade:

*States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.*

2 Preamble and art 3(5) (f) & (g), Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, U.N. Doc. E/CONF.82/15 (1988), reprinted in 28 I.L.M. 493.

3 UN Commission on Narcotic Drugs, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (adopted at the High Level Segment of the UN Commission on Narcotic Drugs, 11-12 March 2009); UN Commission on Narcotic Drugs, Report of the 52nd Session, UN Doc E/2009/28-E/CN.7/2009/12 (1-2 December 2009) paras 13, 20, 23.

4 Ibid Part I section A.7 ‘Targeting vulnerable groups and conditions’ pp. 22, 23

Key to any understanding of this provision is the requirement for states parties to adopt “appropriate measures”. Detailed analysis of the provision within the CRC as a whole, and in keeping with broader system coherence in international law, shows that any appropriate measures must pass two tests: they must be rights-compliant, and they must be effective. Simply put, abusive measures fail the test of the CRC, as do those that are arbitrary or lacking in evidence of effectiveness of positive impacts for children and young people.<sup>5</sup>

Guidance may be sought from the UN Committee on the Rights of the Child, which oversees the implementation of the CRC. Consistent recommendations from the Committee are that preventive and treatment efforts are an obligation,<sup>6</sup> that information for children should be “accurate and objective,”<sup>7</sup> and that children should not be treated as criminals for their drug use.<sup>8</sup> The Committee has also been consistent on the need for appropriate harm reduction services for children and young people who may need them, and included this recommendation in its 2014 General Comment on the child’s right to health.<sup>9</sup> However, the Committee’s recommendations remain relatively limited on this topic.

The requirements of rights compliance and effectiveness are therefore important core concepts to guide interventions for children and young people who use drugs, children’s involvement in the drug trade, and drug control more broadly. For example, recent international standards on prevention of drug use developed by the UN Office on Drugs and Crime are very helpful. The standards were developed with the rights and wellbeing of children and young people at their core, while assessing the evidence base for various prevention efforts. Recommendations were made for the national and local levels and were endorsed by the Commission on Narcotic Drugs in 2013.<sup>10</sup>

Beyond the CRC, various other agreed international standards must come to bear on our understanding of “appropriate measures” and rights compliance. When children are involved in criminality due to their drug use or through involvement in the drug trade,

5 D Barrett ‘Article 33 of the United Nations Convention on the Rights of the Child: Protection from narcotic drugs and psychotropic substances’, in P Alston and J Tobin, eds. *A commentary on the United Nations Convention on the Rights of the Child*. Oxford University Press, forthcoming, 2016. See also K Thompson, *Drug treatment: Legality and obligation under the international drug conventions and human rights*. Thesis submitted for the degree of MA in human rights, University of Vienna, August 2014 (applying this two-stage test to drug treatment provisions of the drug conventions and documenting support through resolutions of the UN Commission on Narcotic Drugs).

6 See, for example, UN Committee on the Rights of the Child, Concluding Observations, Kazakhstan, CRC/C/KAZ/CO/3, para 52; Benin, CRC/C/15/Add106, para 31; Mozambique, CRC/C/15/Add172, para 71(b); Lithuania, CRC/C/15/Add146, para 50.

7 See, for example, Committee on the Rights of the Child, Concluding Observations, Guyana, CRC/C/GUY/CO/2-4, para 50(d); Albania, CRC/C/ALB/CO/2-4, para 64(b); Romania, CRC/C/ROM/CO/4, para 71; Sweden, CRC/C/SWE/CO/4, para 49(a); Bulgaria, CRC/C/BGR/CO/2, para 50.

8 See Concluding Observations, Ukraine, CRC/C/UKR/CO/4, para 62(b); Armenia, CRC/C/15/ADD.225, para 63; Indonesia, CRC/C/15/ADD.223, para 74; Norway, CRC/C/15/Add.263, para 44; Denmark, CRC/C/DNK/CO/3, para 55; Russian Federation, CRC/C/RUS/CO/3, para 77.

9 Concluding Observations Ukraine, CRC/C/UKR/CO/4, para 59, 60; Austria, CRC/C/AUT/CO/3-4, para 51; Albania, CRC/C/ALB/CO/2-4, para 63(b); Guinea, CRC/C/GIN/CO/2, para 68; Guyana, CRC/C/GUY/CO/2-4, para 50(d); General Comment No. 3: HIV/AIDS and the Rights of the Child, UN doc. no. CRC/GC/2003/3, para 39; *General Comment No15: The Right of the Child to the Highest Attainable Standard of Health*, UN doc. no. CRC/C/GC/15, para 66.

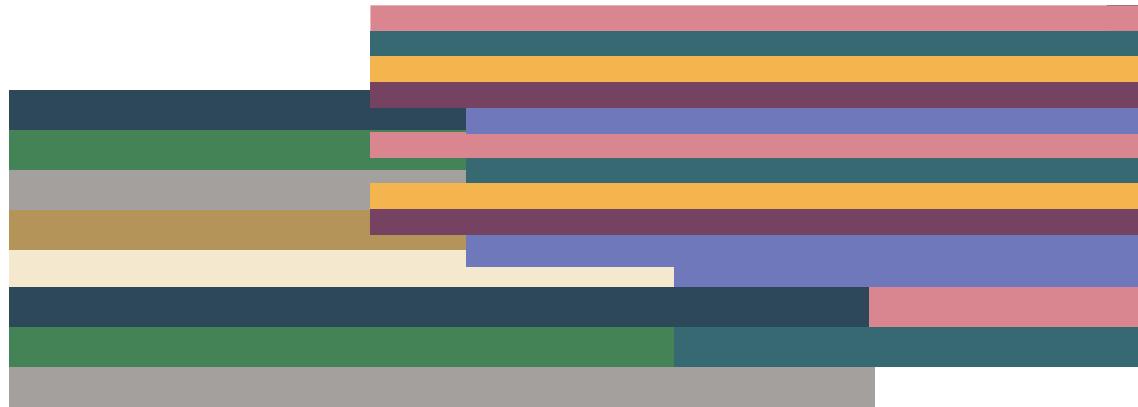
10 UN Office on Drugs and Crime, *International Standards on Drug Use Prevention*, UNODC, 2013; Commission on Narcotic Drugs, Resolution 57/3 (2014), ‘Promoting prevention of drug abuse based on scientific evidence as an investment in the well-being of children, adolescents, youth, families and communities.’

international juvenile justice standards must be brought into play. Agreed standards are contained in, among others, the “Beijing Rules” (UN Standard Minimum Rules on the Administration of Juvenile Justice)<sup>11</sup> and the “Havana Rules” (UN Rules for the Protection of Juveniles Deprived of their Liberty)<sup>12</sup>. The primary goals of juvenile justice are prevention and diversion from the criminal justice system. At the other end of the spectrum, detention of children must be a measure of last resort and then for the shortest duration possible, separate from adults and with a range of other safeguards.<sup>13</sup>

“The primary goals of juvenile justice are prevention and diversion from the criminal justice system.”

Given the breadth of issues affecting children in relation to drug policy, however, a full outline of applicable standards developed over the decades is beyond the scope of this briefing. The annex to this brief demonstrates the applicability of a wide range of articles of the Convention on the Rights of the Child to various aspects of drug control and the potential for the CRC to serve as an evaluative framework for the UNGASS.

- 11 UN General Assembly, “United Nations standard minimum rules for the administration of juvenile justice,” UN doc. no. GA/RES/40/33, 1985.
- 12 UN General Assembly, “United Nation rules for the protection of juveniles deprived of their liberty,” UN doc. no. GA/RES/45/113, 1990.
- 13 Committee on the Rights of the Child, *General Comment No. 10: Children’s rights in juvenile justice* UN doc. no. CRC/C/GC/10, 2007.



## WHAT WE KNOW AND DON'T KNOW: DRUG USE, DRUG RELATED HARMS, AND INVOLVEMENT IN THE DRUG TRADE

### Drug use and drug-related harms

Due to limited surveillance in the majority of countries, most of the best available data on drug use among young people relates to high-income countries in Europe and North America, as well as Australia and New Zealand. In these countries, cannabis remains by far the most widely used illicit substance among school-aged young people, and information on rates of use of ecstasy, amphetamines, cocaine, and novel psychoactive substances are also available.<sup>14</sup> However, the majority of the world's children and young people live in low- and middle-income countries in Asia, Africa, and South America. While there have been recent improvements, data on drug use and related harms among children and young people in these regions remain comparatively poor.<sup>15</sup>

The majority of studies not only come from high-income countries but also rely on self-reporting by an accessible group of young people, normally school students. School-based surveys are important and cost-effective and sometimes comparable across countries, but there are important limitations, including, obviously, that they omit those who are not attending school or have been excluded from school. Where studies have surveyed vulnerable young people not limited to those who attend school, they find much higher levels of drug use. For example, a World Bank study on solvent use and other risky behaviors from 2011 involved interviews with 640 street-involved children in Dhaka. Over half were aged 15 and under, with 19 percent aged 12. Cigarettes (86 percent), glue (42 percent), and cannabis (36 percent) were the most commonly used substances.<sup>16</sup> Nonetheless, a recent systematic review of substance use among street-involved children involving 50 studies across 22 “resource-constrained” countries found “significant gaps in the literature, including a dearth of data on physical and mental health outcomes, HIV, and mortality in association with street children’s substance use.”<sup>17</sup>

- 14 UN Office on Drugs and Crime, *World Drug Report 2014*, Vienna, 2014; B Hibell, U Guttormsson, S Ahlström et al. *The 2011 ESPAD Report: Substance Use Among Students in 36 European Countries*, European School Survey Project on Alcohol and Other Drugs, 2011; European Monitoring Centre on Drugs and Drug Addiction, *Drug Use and Related Problems Among Very Young People (Under 15 Years Old)*, Lisbon: EMCDDA 2007; Institute for Social Research, University of Michigan, *Monitoring the Future: National Survey Results on Drug Use 1975-2013*, Ann Arbor, 2014.
- 15 C Cook, A Fletcher. Youth drug use research and the missing pieces in the puzzle: How can Researchers Support the Next Generation of harm reduction approaches? In D Barrett, ed. *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People* (iDebate Press 2011).
- 16 I Mahmud, KZ Ahsan, M Claeson. Glue sniffing and other risky practices among street children in urban Bangladesh. Washington, DC: World Bank, 2011.
- 17 L Embleton, A Mwangi, R Vreeman et al. The epidemiology of substance use among street children in resource-constrained settings: a systematic review and meta-analysis. *Addiction* 108(10):1722-1733, 2013.

“A recent study from Canada, for example, showed that the majority of a cohort of 529 street-involved young people aged 14-26 reported dealing drugs.”

Further strategic information, including why and under what circumstances children and young people use drugs and experience harm, is necessary to develop future strategies. However, current drug policies with visions of eliminating use among this age group tend to measure success primarily in drug-use prevalence rates, leading to investments in studies that will provide the data necessary for that metric.<sup>18</sup>

### Children and young people in the drug trade

It is important at the outset to distinguish among the ways in which children may be involved in the drug trade, which is often assumed to be a straightforward exploitative relationship between children and adults involved in criminality. It is rarely this simple. A middle-class adolescent dealing drugs in order to buy expensive aspirational products, for example, is not the same as a street-involved child selling drugs to survive or a child working her family's opium plantation, who in turn is not the same as a child soldier in Rio or a young member of a gang in Honduras. The reason to make these distinctions, as with the distinction between types of drug use and methods of consumption, is to ensure that responses are appropriate and targeted. It must be recognized also that involvement in the drug trade and drug use may be connected. A recent study from Canada, for example, showed that the majority of a cohort of 529 street-involved young people aged 14-26 reported dealing drugs. Those who sold drugs were more likely than others to be crack cocaine users and homeless, and to be motivated by drug dependence and basic survival needs.<sup>19</sup>

<sup>18</sup> Cook and Fletcher, op. cit.

<sup>19</sup> D. Werb, T Kerr, K Li et al. Risks surrounding drug trade involvement among street-involved youth. *American Journal of Drug and Alcohol Abuse* 34:810-820, 2008.

In Afghanistan and Colombia, one of the most common ways in which children are involved in the drug trade is through farming illicit crops. Such practices are enabled via a complex interplay of tradition, conflict, and poverty and are almost always linked to the child's survival.<sup>20</sup> 'Javier', aged 11, from Guaviare in Colombia describes his family's involvement in coca production:

*We had a small farm and didn't make much money off of the coca, but the money we made, we used to buy food for the house, seeds for food crops, and more land to raise a cow...Nothing else is profitable. Most people don't want to grow coca, but they feel like they have no other option.*<sup>21</sup>

Clearly economic and social factors should be addressed including basic infrastructure and market access. A number of alternative development programs relating to illicit crop production provide important lessons in this regard, but bringing such programs to scale is an ongoing challenge.<sup>22</sup>

Children's involvement in the drug trade in Brazil provides a further example of this need. A 2002 International Labour Organization (ILO) rapid assessment found that such children were from the poorest families, had low educational attainment, were primarily black or pardo, and found it difficult to exit the drug trade due to economic necessity, friendships, and police extortion. Two of their greatest fears were imprisonment or death.<sup>23</sup>

Despite the complexities of these problems, and despite treaty commitments to prevent involvement in the drug trade, little work focused on this area has been done at the international level. The UNGASS process presents an opportunity to initiate efforts fill this important gap and improve policy focus on this issue.

**"A 2002 International Labour Organization (ILO) rapid assessment found that such children were from the poorest families, had low educational attainment, were primarily black or pardo, and found it difficult to exit the drug trade due to economic necessity..."**

20 See J Hunter-Bowman. Real life on the frontlines of Colombia's drug war; A Ahmadzai and C Kuonqui. In the shadows of the insurgency in Afghanistan: Child bartering, opium debt and the war on drugs; both in D Barrett, ed. *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People* (iDebate Press 2011) pp 11-15 and 29-42, respectively.

21 Hunter-Bowman, *ibid.*, p 18.

22 J Buxton. Drug crop production, poverty and development (UNGASS briefing paper). New York: Open Society Foundations, 2015.

23 J de Souza e Silva, A Urani "Children in Drug Trafficking: A Rapid Assessment." International Labour Organization 2002; see also L Dowdney. *Children of the Drug Trade: A Case Study of Children in Organised Armed Violence in Rio de Janeiro*. Save the Children, 2003, at: <http://resourcecentre.savethechildren.se/library/children-drug-trade-case-study-children-organised-armed-violence-rio-de-janeiro>

## CHILDREN, YOUNG PEOPLE, AND DRUG CONTROL: POTENTIAL RISKS AND MANIFEST HARMS

### Prevention and treatment

Prevention of drug use and treatment of drug dependence are generally considered to be positive policy responses. Aside from challenges relating to effectiveness,<sup>24</sup> and the absence or inadequacy in many places of youth-specific treatment and harm reduction options, child rights, and welfare concerns have been raised by various prevention and treatment interventions.

In schools, random drug testing, sniffer dogs, and strip-searching raise important child rights, ethical, and practical concerns. Strip-searching of students is degrading and humiliating, criticized by child rights groups and condemned by the U.S. Supreme Court as a rights violation following the now famous case of Savana Redding. Redding was 13 when she was strip-searched based on a tip from another student that she had brought prescription strength ibuprofen and over the counter naproxen to school, and was distributing such medications. No drugs were found under her clothes after two female school officials searched her underwear. In a landmark ruling, the majority of the Supreme Court found that searching Redding had been unreasonable and violated her rights under the fourth amendment of the U.S. Constitution.<sup>25</sup>

The use of sniffer dogs and random drug testing in schools both raise privacy concerns, as well as run contrary to the known positive effects on rates of drug use brought about by an ethos of trust between students and faculty, which is eroded by these methods.<sup>26</sup> The largest study on random school drug testing showed that it had no effect on rates of use among students compared to no such testing taking place.<sup>27</sup> Despite these concerns the

24 On prevention, see UN Office on Drugs and Crime, *International Standards on Drug Use Prevention*, Vienna, 2013.

25 Supreme Court of the United States, *Stafford Unified School District #1, et al., petitioners v. April Redding, Respondent* (2009) 557 US. No.08-479.

26 C Bonell, A Fletcher, J McCambridge. Improving school ethos may reduce substance misuse and teenage pregnancy. *British Medical Journal* 334(7594):614-616, 2007.

27 R Yamaguchi, LD Johnston, PM O'Malley. Relationship between student illicit drug use and school drug-testing policies. *Journal of School Health* 73(4):159-164, 2003.

need to send a ‘strong message’ about drugs can tend to over-ride concerns about the rights and wellbeing of individual young people affected by such practices.

The utmost care is required to ensure rights compliance and effectiveness in drug treatment. This need is no better illustrated than by the shocking cases of abuse unearthed by Human Rights Watch at drug detention centers in various countries. In Cambodia, for example, Human Rights Watch reported that: “In 2008 just under one quarter of detainees in government drug detention centers were aged 18 or below. Contrary to international law, they are detained alongside adults. Child detainees told us of being beaten, shocked with electric batons and forced to work.”<sup>28</sup>

While child wellbeing can be seriously affected by parental drug dependence and requires targeted efforts, any policies or interventions in this regard must also carefully consider the best interests of the child. In the United Kingdom, for example, there have been repeated threats from government to remove benefits from people who are drug-dependent if they do not cease using drugs within a certain time. Children’s groups have been among the first to react, stating that such measures would have a significant impact on dependent children.<sup>29</sup> Parental custody can be challenged in some countries due to the parent’s status as a drug user independent of evidence of harm or neglect,<sup>30</sup> despite the importance for child development of keeping families together wherever possible. In the United States, some states are applying stringent criminal and child endangerment laws to pregnant women who use drugs, resulting in convictions despite medical evidence and best practice guidance.<sup>31</sup> Instead of such punitive and confrontational measures, there are more positive examples from which to learn such as substance use specialist midwives and social workers as well as other interventions geared towards assisting new parents rather than punishing them.<sup>32</sup>

28 Human Rights Watch. “Skin on the cable”: The illegal arrest, arbitrary detention and torture of people who use drugs in Cambodia, 2010, p 6.

29 The Children’s Society’s response to the publication of the White Paper –Reducing Demand, Restricting Supply, Building Recovery. London: The Children’s Society, 9 December 2010.

30 Eurasian Harm Reduction Network. Women and drug policy in Eurasia. Vilnius, 2010, pp 3, 4.

31 See D Rhode. The terrible war on pregnant drug users. *New Republic*, 17 July 2014.

32 F Macrory. The drug liaison midwife: developing a model of maternity service for drug-using women. In: H Klee, M Jackson, S Lewis, eds. *Drug Misuse and Motherhood*. London: Routledge, 2002, pp 234-249; D Forrester et al. *Happiness project working with resistance in families experiencing violence: Option 2 - Cardiff and Vale - Evaluation report 2008*, (Prepared for the Welsh Assembly Government, UK, 2009); S Dawe and P Hartnett. Reducing potential for child abuse among methadone-maintained parents: results from a randomized controlled trial. *Journal of Substance Abuse Treatment* 32(4):381-90, 2007.

“Children were also caught up in Thailand’s 2003 war on drugs that left over 2,000 people dead.”

### Policing and drug enforcement

There are various ways in which children and young people may be affected by policing and drug enforcement. At the extreme end they may experience violence or even death. Hundreds of children have been killed since the beginning of Mexico’s current drug war in 2006, including at police and military

checkpoints.<sup>33</sup> Children were also caught up in Thailand’s 2003 war on drugs that left over 2,000 people dead.<sup>34</sup> These are at the extreme end of enforcement. Less extreme but still very serious forms of violence are regularly suffered by young people, especially those who use drugs and/or are street involved. The Canadian study of young people involved in the drug trade cited above observed heightened levels of police violence against street-involved young people.<sup>35</sup> In Ukraine, a cross-sectional behavioral survey was recently conducted of 805 street-involved adolescents (aged 10–19 years) in the cities of Kiev, Donetsk, Dnepropetrovsk, and Nikolaev. Two-thirds reported police harassment.<sup>36</sup> High levels of police harassment are known to drive young people away from available health services. Here we see policing undermining the health goals of drug policy and the wellbeing of those the system should work to protect.

Beyond police harassment and violence, there are direct effects on children and young people due to day-to-day policing of drug offences. For example, children are regularly caught up in home raids, experiencing their parents being handcuffed and arrested. Some have been strip-searched in such raids.<sup>37</sup> Recent research conducted by the non-governmental organization Release found that in London half the 280,000 stop-and-search incidents carried out by the Metropolitan police in 2009/2010 were on

33 *El Universal*, “Ejército mató a mis hijos: Cynthia Salazar,” April 13, 2010; Los Angeles Times, “19 in Mexican Army Held in Deaths of 5,” June 5, 2007.

34 Human Rights Watch. Not enough graves: the war on drugs, HIV/AIDS and human rights violations (Thailand). New York, 2004.

35 Werb et al., *op. cit.*

36 J Busza, OM Balakireva, A Teltschik et al. Street-based adolescents at high risk of HIV in Ukraine. *Journal of epidemiology and Community Health* 65(12):1166–70, 2011.

37 For example, “Child advocate urges strip search overhaul,” ABC News, 1 February 2012.

young people aged 21 years or below. Almost 16,900 were of children aged 15 or below. Young black boys were disproportionately affected, and there is no legal requirement for the search to be carried out in the presence of an appropriate adult.<sup>38</sup> The Release report showed a disturbing consequence of these tactics, which was an erosion of trust in the police and a reluctance to turn to them when they may be needed. As one parent told Release: "It is difficult to explain to children why they are being treated differently than their white peers and it is difficult to report any other crimes to police as I have lost all confidence in their ability to protect me and my family."<sup>39</sup>

### The effects of criminal records on young people and parents

A 2009 study by the Eurasian Harm Reduction Network covering nine countries in Central and Eastern Europe found that most countries adopted adult criminal justice approaches to minors. Six of the nine countries imposed criminal records on minors for possession. The consequences of such records for young people range from discrimination and stigmatization to diminished access to education and reduced prospects for future employment, as well as negative effects on family relationships. Criminal records should therefore be reserved only for serious crimes committed by minors, but in the nine countries surveyed drug offences often qualified as "most serious crimes" engaging lower ages of criminal responsibility.<sup>40</sup>

Criminal records for minors are not the only concern. For example, over 70,000 criminal records were handed down in the United Kingdom for possession of illicit drugs in 2013, and over 1.2 million since 1996.<sup>41</sup> A global figure of families burdened with criminal records for minor drug offences is not known, but the effect is that life opportunities including educational, travel, and employment prospects for parents are limited with resulting damage to dependent children.<sup>42</sup>

<sup>38</sup> N Eastwood, M Shiner, *The numbers in black and white: Ethnic disparities in the policing and prosecution of drug offences in England and Wales*, Release, 2014 p. 12

<sup>39</sup> *Ibid.*, p. 49

<sup>40</sup> D Barrett 'Juvenile Justice and Drug Use' in S. Merkinaitė & J P Grund (Eds) *Young People and Injecting Drug Use in Selected Countries of Central and Eastern Europe* (Eurasian Harm Reduction Network 2009)

<sup>41</sup> Home Office, 2013, *Criminal justice statistics quarterly: December 2013*, at: <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013>; N Eastwood, M Shiner, D Bear. *The numbers in black and white: ethnic disparities in the policing and prosecution of drug offences in England and Wales*. London: Release, 2013, p.38. At: [www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%20final%20version.pdf](http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%20final%20version.pdf)

<sup>42</sup> For the U.S. case, see, e.g., B Western, C Muller. *Mass incarceration, macrosociology and the poor*. *Annals of the American Academy of Political and Social Science* 647:166-189, 2013.

“Many of those in prisons are parents, and the effects of their incarceration on dependent children are insufficiently taken into account in laws, policies, and programs.”

43 R Walmsley. *World prison population list*—10th ed. London: International Centre for Prison Studies, 2014. At: [www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wpp1\\_10.pdf](http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wpp1_10.pdf)

44 E Iakobishvili. “Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia and the Need for Legislative and Sentencing Reform.” London: Harm Reduction International, 2012.

45 C Youngers. “Behind the staggering rise in women’s imprisonment in Latin America.” 9 January 2014, at: <http://www.wola.org/es/node/4274>; see also P Metaal and C Youngers (eds), *Systems Overload: Drug Laws and Prisons in Latin America*. Washington and Amsterdam: Washington Office on Latin America, Transnational Institute, 2011.

46 UN Women. *Progress of the World’s Women*, 2011-12: In Pursuit of Justice. New York, 2011, pp. 62-64.

### Children of incarcerated parents

It is estimated that there are more than 10.2 million people in prisons and pre-trial detention around the world.<sup>43</sup> The numbers of people in prison and pre-trial custody for non-violent drug offences globally are not known, but regional and national statistics seem to indicate that these could be significant, potentially into the millions overall. Many of those in prisons are parents, and the effects of their incarceration on dependent children are insufficiently taken into account in laws, policies, and programs.

Some 625,000 of the people in prisons worldwide are women, a figure which is growing on every

continent. Due to their role as primary caregivers in the vast majority of cases, a focus on women in prison for drugs highlights the acute and chronic problems for children associated with the over-use of prison as a response to drug offences. One in four women (28 percent) in prison in Europe and Central Asia are incarcerated for non-violent drug offences.<sup>44</sup> Elsewhere the numbers in prison for drugs vastly outweigh all other offences: 75–80 percent of all women in prison in Ecuador are there for drug offences; 30–60 percent in México; 64 percent in Costa Rica; 60 percent in Brazil; and 70 percent in Argentina.<sup>45</sup> The sentences being served are often very long, exceeding sentences for violent crimes, with little or no distinction between minor crimes, for which the majority were convicted, and involvement in organized criminal activity. Many of these women are mothers, often single mothers, who, with few economic options, turned to the drug trade to help feed and clothe their children. Indeed, UN Women has described many women’s involvement in the drug trade as a crime of poverty.<sup>46</sup>

The effects of parental incarceration range from damage to family relationships and the related developmental concerns for children, to the stigma associated with having a parent in prison, to the loss of social benefits. The children affected can suffer from trauma, fear, shame, guilt, and low self-esteem; changes in sleep patterns or eating behaviour; starting or increasing their use of drugs, alcohol, and tobacco; stress; depression; and symptoms of post-traumatic stress disorder.<sup>47</sup>

Many babies are born in prison, and children can spend their first years in prison with their mothers due to a lack of alternative care options, especially when mothers are far from home. This prioritizes the sentence over the best interests of the child and runs contrary to guidance in the 2010 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which favors non-custodial measures for pregnant women and those with dependent children.<sup>48</sup>

“When children are considered, then many of the negative effects of parental imprisonment can be ameliorated...”

A recent review of best practices found that “when children are considered, then many of the negative effects of parental imprisonment can be ameliorated,” including through helping children to understand what is happening to their parent and themselves; enabling children to stay in contact with an imprisoned parent; and supporting children in readjusting when a parent leaves prison.<sup>49</sup> This, however, comes after the decision as to whether imprisonment is really necessary. The sheer numbers of men and women in prison for drug offences and the unknown numbers of children affected demand that these sentences be revisited for non-violent drug offences.

47 O. Robertson. The impact of parental imprisonment on children. New York: Quakers UN Office, 2007, p. 9.

48 Rule 64, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, Economic and Social Council (ECOSOC), Resolution 2010/16, UN doc. no. E/RES/2010/16, 2010, Annex.

49 Robertson, op. cit., pp 7, 8.

“Extensive research shows that high levels of violence and its effects on family, community, and social structures can cause long-term psychological damage to children.”

### Exposure to drug-related violence and conflict

The violence associated with the drug trade is well known. Since 2006 the death toll in Mexico from drug-related violence has increased to over 100,000 while drugs have been, as noted by the United Nations Development Program, the “center of gravity” of Colombia’s civil conflict for decades.<sup>50</sup> Thousands of children and young people have been killed and injured; tens of thousands have lost parents in such drug-

related violence. As we see in Colombia, many tens of thousands more, perhaps hundreds of thousands, have been displaced. But the harms extend further. Extensive research shows that high levels of violence and its effects on family, community, and social structures can cause long-term psychological damage to children. That damage is documented from various conflict zones where many communities are still struggling with the harmful impacts on children many years after the conflict ended. It includes emotional and physical withdrawal, developmental regression, or bed-wetting. Trust in adults and the future can also be eroded, especially when children witness their parents’ helplessness.<sup>51</sup>

### Crop eradication

Many tens of thousands of families are involved in illicit crop production across various countries as a means of survival. Rarely, however, are poverty and survival needs factored into efforts to eradicate illicit crop production, with success measured primarily in reductions of hectares under production. The effects on rural farmers are clear. “I am not hesitant to state that both opium cultivation and trade and opium eradication are equally endangering the children of farmers’ families,” admitted the head of counter-narcotics in Kandahar. “You can

50 UN Development Program, *El conflicto, callejón salida: Informe Nacional de Desarrollo Humano para Colombia 2003*, p. 305. [http://hdr.undp.org/sites/default/files/colombia\\_2003\\_sp.pdf](http://hdr.undp.org/sites/default/files/colombia_2003_sp.pdf)

51 A Barra, D Joloy. Children: Forgotten victims of Mexico’s drug war. In D Barrett, ed. *Children of the drug war*, op. cit., pp 36-37.

easily see school-age children who, instead of going to schools, are involved in cultivating, irrigating, and harvesting opium. On the other hand, when we eradicate opium fields, we indeed make the farmer and his family poor and impoverished. In such circumstances the children of poor families cannot afford to go to school, so they become means of income for their families.”<sup>52</sup>

In Afghanistan and elsewhere, eradication campaigns have contributed to human displacement, reduced school enrollment and attendance, reductions in family incomes, and food insecurity.<sup>53</sup> In Colombia, the effects are exacerbated by the use of aerial fumigation using the chemical glyphosate and a range of additional ‘surfactants’. Such spraying has been ongoing for three decades, covering millions of hectares of land and the children and families living there.<sup>54</sup> Evidence of health effects, including on pregnant women, have led numerous UN human rights monitors to criticize the

practice of fumigation in Colombia and for the UN Committee on the Rights of the Child to call for a child rights impact assessment.<sup>55</sup>

Manual eradication, however, also carries serious risks in Colombia given the desperation of the communities and the absence of state presence in many of the areas to which the eradicators are sent. Violence, theft, and destruction of property have been documented, adding to the violence experienced by children in the context of drug control.<sup>56</sup>

“...eradication campaigns have contributed to human displacement, reduced school enrollment and attendance, reductions in family incomes, and food insecurity.”

52 Ahmadzai & Kuonqui, op. cit., p. 49.

53 D Barrett, R Lines, R Schleifer et al. Recalibrating the regime: The need for a human rights-based approach to international drug policy. Beckley Foundation, International Harm Reduction Association, Human Rights Watch, Canadian HIV/AIDS Legal Network, 2008, pp 30, 31.

54 For an overview see Memorial of Ecuador, Ecuador v Colombia, case concerning aerial herbicide spraying before the International Court of Justice, 28 April 2009.

55 Committee on the Rights of the Child, *Concluding Observations, Colombia*, UN doc no CRC/C/COL/CO/3, 2006, para 72.

56 Witness for Peace and Association Minga. “Forced manual eradication: The wrong solution to the failed US counter-narcotics policy in Colombia,” September 2008.

### Access to controlled medicines

The broad failure of the international drug control regime to secure availability of and access to controlled medicines is now well known. For example, over 80 percent of the world's population lacks access to opiates for the treatment of moderate to severe pain. Among those affected are children with conditions such as cancer, AIDS, neurological disorders, genetic anomalies, metabolic conditions, severe disabilities, and organ failure, as well as children with parents or family members living in pain.

As with other areas, the reason for this failure is multifaceted, but a central concern is the disproportionate focus over time on diversion of medicines into the criminal market and on concerns about recreational use and dependence. For decades messages about opiates have, for the most part, been rooted in narratives of threat and fear aimed at deterring recreational use. Such messages and the criminal laws and enforcement efforts put in place to 'fight' drug use have led to what has been described as a chilling effect on access to medicines. As Human Rights Watch found in Kenya: "Until recently, medical and nursing schools taught that morphine must only be administered to the terminally ill, because of unwarranted fear that it would cause addiction, and hospitals often only offer the drug when curative treatment has failed....Even at the seven public hospitals where morphine is available, doctors and nurses are sometimes reluctant to give it to a child, because they believe it amounts to giving up on the fight to save the child's life, and because unwarranted fears of addiction remain."<sup>57</sup>

<sup>57</sup> Human Rights Watch, *Needless pain: Government failure to provide palliative care for children in Kenya*, 2010) p. 8



It should be noted that medications for conditions beyond pain relief are also affected. Moreover, certain substances with potentially significant medical benefits are stringently controlled, affecting access as well as basic research. Recent debates about the potential for cannabis in the reduction of childhood epileptic seizures have brought this issue to the forefront.<sup>58</sup>

## RECOMMENDATIONS FOR A MEANINGFUL FOCUS ON CHILDREN AND YOUNG PEOPLE AT THE UNGASS AND BEYOND

The protection of children is regularly a top priority in political declarations on drugs adopted within the UN system. In keeping with this focus, the theme for the 2016 UNGASS is “A better tomorrow for the world’s youth.” But if the rights and well-being of children and young people are to be taken seriously, then the General Assembly must grapple with the role of global response to drug use and the drug trade in either contributing to or helping to mitigate the physical, social, emotional, and developmental harms experienced by children and young people. Geared towards moving beyond standard declarations reaffirming states’ commitments to protecting children, the following recommendations promote a meaningful process for better understanding and taking concrete action on the real issues affecting children.

<sup>58</sup> MR Cilio, EA Thiele, O Devinsky. The case for assessing cannabidiol in epilepsy. *Epilepsia*, 55(6):787–790, 2014; “GW Pharmaceuticals Commences Phase 2/3 Clinical Trial of Epidiolex as a Potential Treatment for Epilepsy in Dravet Syndrome,” GW Pharma Press Release, 30 October 2014.

**1. Ensure clarity on the applicable standards underpinning the debates:** The UN drug control conventions and the 2009 political declaration on drugs are insufficient frames of reference for a focus on children and young people at UNGASS. There is a lack of specific challenges, methods, or goals relating to children and young people identified in the treaties or the political declaration. Moreover, existing policies cannot be used as a framework to evaluate themselves.

There are a wide range of international standards that relate to children and are applicable to drug policy. These should be explicitly agreed on as the frame of reference for debates focusing on the success or failure of national and international efforts. Article 33 of the UN Convention on the Rights of the Child (CRC) provides an entry point for the application of such standards, requiring that state efforts are evaluated with regard to rights compliance and effectiveness. These criteria, in turn, engage a wide range of international standards, including those on juvenile justice.

With the aid of this framework, principles, and metrics may be developed from the CRC and other agreed international standards to inform a meaningful, evaluative debate at the UNGASS. The annex to this brief provides an illustration of the use of the CRC as such a framework.

“...if the rights and well-being of children and young people are to be taken seriously, then the General Assembly must grapple with the role of global response to drug use and the drug trade...”

**2. Ensure meaningful participation of civil society, including child rights organizations and children and young people:** Civil society participation and the representation of those most affected are critical to informed debates. Meaningful participation requires efforts to engage organizations and groups that may not have previously participated

“Meaningful participation requires efforts to engage organizations and groups that may not have previously participated in international drug policy debates.”

in international drug policy debates. In particular, child rights groups and children’s organizations focusing on health, development, or other related areas should be encouraged to take part. There is also a need to strengthen the involvement of children and young people. Efforts should be made to reach out to children most at risk and ensure that their viewpoints are heard and

integrated. This may require creative processes, such as national consultations and written and video submissions. A clear and transparent selection process would be required if children and young people are to attend the UNGASS.

### **3. Initiate a global study on the impacts of drug policies on children and young people:**

The UNGASS should be seen as the beginning of a stronger focus on children and young people, rather than an end in itself. The limited timeframe leading up to April 2016 does not offer significant opportunities for the in-depth studies required for policy improvements to move forward. It is recommended that the General Assembly agree to the initiation of a global study on the impact of drug policies on children and young people. The proposed study would be modelled on the UN study on violence against children requested by the General Assembly in 2002 following the GA Special Session on children earlier that year.<sup>59</sup> As such it would require an independent expert or working group appointed to oversee the study with appropriate budgetary resources, as well as secretariat and specialized agency assistance. It should utilize the UN Convention on the Rights of the Child as a binding, consensus-based framework for analysis, alongside a range of other agreed standards, as was the case with the global violence study, and as recommended above for the UNGASS itself. It is suggested that the proposed study would be presented at the high-level meeting on drugs scheduled for 2019, allowing three years for its delivery.

<sup>59</sup> PS Pinheiro. *World report on violence against children*. Geneva: United Nations, 2006, submitted in response to UN General Assembly resolution 57/190, 19 February 2003.

## ANNEX

### “APPROPRIATE MEASURES”:

### The UN Convention on the Rights of the Child as a framework for a global study on the impacts of drug policies on children and young people

This is an illustrative exercise, addressing key articles in numerical order and intended to demonstrate the kinds of questions drawn out by a child rights analysis. It should be reorganized and refined for the purposes of a global study. For example, structure, process, and outcome indicators (measuring laws and policies, state efforts, and rights-based outcomes) could be adopted as a structure. This would follow on from the work of the former UN Special Rapporteur on the Right to Health, Professor Paul Hunt, and the Office of the High Commissioner for Human Rights, and would help, for example, to disaggregate laws and policies, state efforts, and outcomes for specific groups.<sup>60</sup>

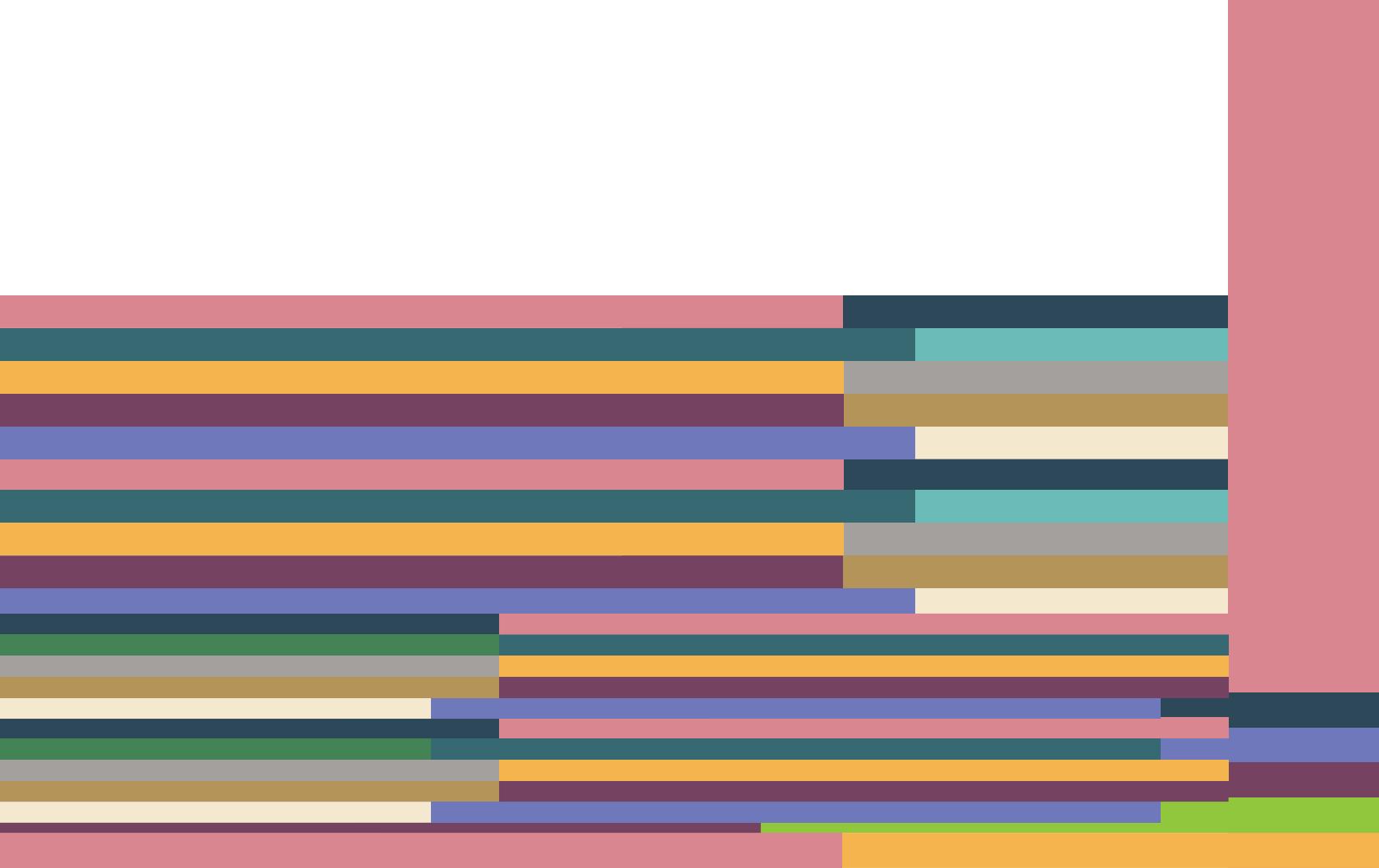
<sup>60</sup> For a range of documents and studies see <http://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx>

<p><b>Article 2</b> (Non-discrimination)</p>	<p>Are data available on patterns of drug use, dependence, and related health harms disaggregated by age, gender, and location?</p> <p>How do enforcement practices affect specific groups of children and young people?</p> <p>How do supply reduction practices, such as crop eradication strategies, affect specific groups of children?</p>
<p><b>Article 3</b> (Best interests of the child)</p>	<p>How is the 'best interests' principle taken into account in drug policy decision-making?</p> <p>Has a child rights impact assessment been carried out on any aspect of national drug policies?</p> <p>How are the best interests of the child taken into account in:</p> <ul style="list-style-type: none"> <li>• Treatment interventions</li> <li>• Efforts with parents who use drugs</li> <li>• Arrest, sentencing, and imprisonment of children and young people</li> <li>• Arrest, sentencing, and imprisonment of parents</li> <li>• Crop eradication efforts</li> </ul>
<p><b>Article 4</b> (Resource allocation)</p>	<p>How are resources allocated in drug policies?</p> <p>How are research budgets focused?</p> <p>What proportion of demand reduction budgets go to evidence-based prevention, treatment, and harm reduction for children and young people?</p> <p>What proportion of supply reduction budgets go to alternative livelihoods?</p> <p>What budgetary allocation is made for diversion efforts in juvenile justice?</p> <p>What is the budgetary allocation for ensuring access to essential controlled medicines for paediatric care?</p> <p>How are the best interests of the child taken into consideration in budget setting?</p>
<p><b>Article 12</b> (Participation)</p>	<p>To what extent are children and young people involved in the development of policies that affect them?</p> <p>To what extent are children who use drugs involved in treatment and care decisions relating to their health?</p>
<p><b>Article 16</b> (Right to privacy)</p>	<p>How are children's privacy rights protected with regard to:</p> <ul style="list-style-type: none"> <li>• Drug testing, searches, and other such detection efforts?</li> <li>• Data protection (e.g. are children placed on drug user registries? Is information shared between health and law enforcement agencies?)</li> <li>• Treatment for drug dependence?</li> </ul>

<p><b>Article 17</b> (The right to appropriate information)</p>	<p>Is drugs prevention information evidence-based, accurate, and objective? How is this determined and evaluated?</p> <p>Are children and young people, including those most at risk, aware of available services? How is this achieved and monitored?</p> <p>Are children entitled to confidential information about drugs and harm reduction without parental consent? What are the standards around the provision of such information?</p>
<p><b>Article 18(2)</b> (Assistance to parents/guardians in child-rearing)</p>	<p>What social supports are in place for children whose parents are incarcerated for drug offences?</p> <p>What kinds of family supports are available for parents who use drugs? (e.g. specialized social workers, day care, and employment support)</p> <p>Does status as a drug user represent a <i>prima facie</i> challenge to custody? Under what conditions is custody challenged?</p> <p>Are people who use drugs disqualified from social welfare?</p> <p>What supports are available for families involved in producing illicit crops?</p> <p>Are families involved in production of illicit crops disqualified from social welfare or other assistance?</p>
<p><b>Article 19</b> (Protection from neglect and violence)</p>	<p>What are the state's responses to police and institutional violence against children who use drugs, who are street-involved, and/or involved in the drug trade?</p> <p>How are the effects of drug-related violence on children monitored or studied?</p> <p>Have police or military interventions against drug gangs been assessed for impact on children?</p> <p>What supports are available for children of parents experiencing drug dependence?</p>
<p><b>Article 24</b> (The right to health and health services)</p>	<p>How many children and young people, disaggregated by age, gender, and location, have used illicit substances in the past month, three months, or year?</p> <p>What are the main health harms experienced by these children and young people?</p> <p>Are specialized treatment and harm reduction services available to children and young people who use drugs? How is effectiveness measured?</p> <p>What percentage of children in need have adequate access to essential controlled medicines (e.g. for palliative care, surgeries, epilepsy) in appropriate pediatric formulations?</p> <p>Have child rights impact assessments been conducted as a component of crop eradication strategies?</p>

<p><b>Article 26</b> (Right to social security)</p>	<p>Are people who use drugs disqualified from social welfare benefits? If so, under what conditions?</p> <p>Are people with criminal records, or who have been in prison, disqualified from social security?</p> <p>Are people who have been involved in the production of illicit crops disqualified from social security?</p> <p>How are the best interests of the child taken into account in such decisions?</p>
<p><b>Article 27</b> (Right to an adequate standard of living)</p>	<p>How is the child's right to an adequate standard of living (including nutrition, housing, and clothing) taken into account in:</p> <ul style="list-style-type: none"> <li>• Crop eradication strategies?</li> <li>• Situations where parents have been imprisoned or otherwise detained?</li> </ul>
<p><b>Article 28</b> (Right to education)</p>	<p>Is drugs education provided in schools? How is its quality assessed against best practices?</p> <p>How are the rights of children and young people taken into account in school-based prevention efforts, for example, in random drug testing and searches (lockers, schoolbags, clothing, strip searches, sniffer dogs)?</p>
<p><b>Article 14</b> (Freedom of religion),</p> <p><b>Article 30</b> (Right to enjoy culture), and</p> <p><b>Article 24.3</b> (Abolition of harmful traditional practices)</p>	<p>Where relevant, has an appropriate assessment been undertaken on traditional uses of certain substances or plants, weighing harmfulness against the child's health and his or her rights, in community with others to practice his/her culture, religion, or indigenous traditions?</p>

<p><b>Article 32</b> (Freedom from economic exploitation)</p>	<p>What efforts are undertaken to prevent the use of children in drug gangs and in the illicit drug trade?</p> <p>What efforts are undertaken to assist social reintegration for the children and young people affected? (See also article 39 of the CRC)</p> <p>What data, if any, are available on these phenomena? Are they sufficiently disaggregated to uncover patterns of vulnerability?</p>
<p><b>Article 33</b> (Protection from narcotic drug and psychotropic substances)</p>	<p>What assessments are carried out to ensure that drug policies and practices are 'appropriate' with regard to child rights commitments?</p> <p>How is rights compliance assessed?</p> <p>How is effectiveness assessed?</p>
<p><b>Article 37</b> (Freedom from torture or cruel inhuman or degrading treatment or punishment; freedom from arbitrary arrest or detention; rights of children deprived of their liberty)</p> <p>See also: UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990</p>	<p>What efforts are undertaken to ensure that the absolute prohibition on torture and cruel, inhuman and degrading treatment or punishment is upheld in the context of drug control?</p> <p>How are cases of abuse, whether by police, prison staff, drug treatment institutions, crop eradication teams, or other state or non-state actors, acted upon and perpetrators punished?</p> <p>Are children incarcerated with their parents due to drug offences? How are such children cared for? How were their best interests taken into consideration in sentencing?</p> <p>How many children are in prison for drug offences?</p> <p>How many children are in compulsory treatment for drug dependence?</p> <p>How many cases of abuse have been reported from such institutions and how have these been responded to?</p>
<p><b>Article 40</b> (Juvenile justice)</p> <p>See also: UN Standard Minimum Rules on the Administration of Juvenile Justice, 1985</p>	<p>How many children annually are in contact with the criminal justice system for drug use or drug offences?</p> <p>What efforts are undertaken to divert children from the criminal justice system in the context of drugs?</p> <p>How are children's fair trial standards upheld in relation to drug offences?</p> <p>Are under-18s brought to juvenile drug courts? Under what circumstances? How are their rights upheld in such cases?</p> <p>Is there a procedure for a juvenile criminal record to be expunged upon reaching a certain age?</p> <p>How are children and young people in contact with the criminal justice system assisted with social reintegration (e.g. education, training, and employment)? (See also article 39 of the CRC)</p>



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