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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the question of torture

Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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Dear Madame,

We write in our capacities as United Nations Special Rapporteur on the prevention of torture and cruel, inhuman, or degrading treatment or punishment, and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 8/8 and 6/29.

We wish to refer to the draft outcome documents to be adopted at the 52nd session of the Commission on Narcotic Drugs in March 2009, notably the political declaration and its annex. We thought it would be appropriate to offer some guidance regarding the human rights issues it raises in view of the applicable international law so as to ensure its consistency with international commitments and obligations relating to human rights. In this context, we wish to recall that the General Assembly each year adopts a resolution entitled "International cooperation against the world drug problem," stating that drug control activities must be carried out in conformity with the purposes and principles of the Charter of the United Nations. The 2007 resolution, for example, stated that drug control efforts "must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, and in particular with full respect for…all human rights and fundamental freedoms."[i].

In particular we would like to make recommendations with respect to four areas that are directly related to our human rights mandates, and that are critical to the drug strategy for the next ten years:

1. Harm reduction
2. Ensuring protection against torture in law enforcement measures - extradition and the principles of non-refoulement
3. Ensuring access to essential medicines for pain relief
4. Access to treatment consistent with human rights

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Her Excellency
Ms. Selma Ashipala-Musavyi
Permanent Representative of Namibia to the United Nations at Vienna
Chairperson of the 52nd Session of the Commission on Narcotic Drugs
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1. Harm reduction

Harm reduction is an essential HIV prevention measure endorsed by the General Assembly in the Declaration of Commitment on AIDS in 2001 and in the Political Declaration on AIDS in 2006.[ii] We have reviewed the Chairperson's draft annex, dated 4 November 2008. Given the General Assembly's endorsement and the global HIV pandemic, we are, however, concerned that it fails to include any reference to harm reduction services. In order for member states to live up to their human rights obligations, and to ensure UN system-wide coherence, we believe that the annex should be amended to include specific language supporting comprehensive harm reduction services.

This is especially important in the context of the global HIV pandemic, especially in regions where the drug users community is particularly affected by the lack of human rights protection. The rates of HIV transmission attributed to injection drug use worldwide are well known - as are the means to prevent such transmission. However, despite widespread endorsement by all of the relevant United Nations agencies, including HIV/AIDS, health and drug control bodies, and the overwhelming evidence supporting harm reduction policies as effective HIV prevention strategy, syringe exchange and opioid substitution therapy remain out of reach to the vast majority of persons in need.

This is particularly so in places of detention. International law requires that persons in detention receive a standard of health care equivalent to that available to general population.[iii] Despite this, and support from UNODC, WHO and UNAIDS, needle and syringe programs are available to prisoners in only eight countries throughout the world.[iv] Opioid substitution therapy is provided to prisoners in only thirty-three states, and often restricted to those who already have begun receiving treatment prior to incarceration.[v]

As noted recently by the Secretary General 'Estimates from 94 low- and middle-income countries show that the proportion of injecting drug users receiving some type of prevention services was 8 per cent in 2005, indicating virtual neglect of this most at-risk population.'[vi]

This situation must not remain unaddressed in the forthcoming ten year drug strategy.

Harm reduction is essential to the progressive realization of the right to the highest attainable standard of health for people who are using drugs, and indeed, communities affected by drug use. Moreover, the Committee Against Torture, the Special Rapporteur on Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Court of Human Rights all have raised concerns that the failure to provide adequate health services to detainees may contribute to conditions amounting to cruel, inhuman and degrading treatment.[vii]

The failure to ensure access to harm reduction measures – both inside and outside prisons– puts injection drug users at unnecessary and avoidable risk of HIV and other blood-borne infections. We consider that such failure violates State obligations to respect, protect, and fulfil the right to the highest attainable standard of health, and may amount to cruel inhuman and degrading treatment of this vulnerable and marginalized population.

We recommend that the annex reflect the commitments that member states made in 2001 and 2006, and include a strong commitment to harm reduction -- including needle and syringe exchange and opioid substitution therapy -- as essential HIV prevention measures.

2. Ensuring protections against torture in law enforcement measures: extradition and the principle of non-refoulement

The current draft annex and political declaration discuss extradition in the context of supply reduction (sections B.I; B.V) and judicial cooperation (section F.I). We think it critical that the annex include clear commitments that extradition must be carried out in full compliance with international human rights law, and specifically cite the principle of non-refoulement and the international human rights treaties in which this principle is inscribed.

The principle of non-refoulement establishes an absolute prohibition against the obligatory departure (for example, by extradition, expulsion, return, or extraordinary rendition) of a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture or other cruel, inhuman, or degrading treatment or punishment. This principle is codified in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights.[viii]

Many states, commendably, will not extradite those who may face the death penalty. This is of particular relevance to drug policy due to the number of death sentences handed down and executions carried out for drug offences each year. While capital punishment is not prohibited entirely under international law, the weight of opinion indicates clearly that drug offences do not meet the threshold of "most serious crimes" to which the death penalty might lawfully be applied.[ix] In addition, States that have abolished the death penalty are prohibited to extradite any person to another country where he or she might face capital punishment.[x]

In this context, we strongly recommend that the annex and political declaration ought to specifically state that any extradition must be carried out in accordance with the principle of non-refoulement, stipulated by the Convention against Torture and the International Covenant on Civil and Political Rights, and that this principle bars extradition to jurisdictions that apply the death penalty for drug offences or where there is a risk of torture or cruel, inhuman or degrading treatment.

3. Ensuring access to essential medicines for pain relief

The UN drug conventions provide that narcotic drugs and psychotropic substances are essential for medical and scientific purposes. The 1961 Single Convention on Narcotic Drugs explicitly states that "narcotic drugs are indispensible for the relief of pain and suffering" and must be made available for that purpose.[xi] Despite repeated reminders by the International Narcotics Control Board (INCB) of this often neglected part of the "dual drug control obligation,"[xii] 80 percent of the world population has either no or inadequate access to treatment for moderate to severe pain and that tens of millions of people, including around four million cancer patients and 0.8 million terminally-ill HIV/AIDS patients, suffer from moderate to severe pain each year without treatment, according to the World Health Organization (WHO).[xiii] This situation maintains despite the fact that most pain can be treated effectively with inexpensive medications.

Numerous studies have identified common problems that impede availability and accessibility of controlled medicines for the treatment of pain. Many countries do not recognize palliative care and pain treatment as priorities in health care, have no relevant policies, have never assessed the need for pain treatment or examined whether that need is met, and have not examined the obstacles to such treatment. In many countries, drug control regulations or enforcement practices impose unnecessary restrictions that limit access to morphine and other controlled medicines. They create excessively burdensome procedures for procurement, safekeeping, and prescription of these medications and sometimes discourage healthcare workers from prescribing them for fear of law enforcement scrutiny. Also, in many countries, medical and nursing school curricula do not include instruction on palliative care and pain treatment, which means that many healthcare workers have inaccurate views of morphine and lack the knowledge and skills to treat pain adequately.

The failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel inhuman and degrading treatment. International human rights law requires that governments must provide essential medicines – which include, among others, opioid analgesics -- as part of their minimum core obligations under the right to health.[xiv] Governments also have an obligation to take measures to protect people under their jurisdiction from inhuman and degrading treatment. Failure of governments to take reasonable measures to ensure accessibility of pain treatment, which leaves millions of people to suffer needlessly from severe and often prolonged pain, raises questions whether they have adequately discharged this obligation.

Lack of access to essential medicines, including for pain relief, is a global human rights issue and must be addressed forcefully in the next ten-year drug strategy. The current draft annex includes language requiring Member States to "Comply with the treaties to submit realistic estimates to the INCB as often as necessary to be able to import the required amounts of controlled medicines and to submit statistics in order to enable INCB to plan global production in accordance with global needs." We strongly urge that the annex be further amended to include language requiring Member States to:

- Ensure that national drug control laws recognize the indispensible nature of narcotic and psychotropic drugs for the relief of pain and suffering, and guarantee adequate availability of those medicines for legitimate medical uses, including opioid analgesics and opioids for substance dependence programmes.
- Review for that purpose national legislation and administrative procedures relating to controlled medications for provisions that unnecessarily impede their accessibility and availability for medical use, and develop a plan of action to address them while also taking steps to prevent misuse. Health ministries and health care providers shall be closely engaged in this process, and the WHO Access to Controlled Medications Programme shall offer technical support.
- Ensure that national competent authorities and health ministries, in consultation with healthcare providers, work to establish healthcare systems that are capable of ensuring wide availability of controlled medicines for medical, veterinary and scientific use while preventing abuse, dependence and diversion.
- Ensure appropriate instruction to health professionals on the medical use of all controlled medicines listed on the WHO Model List of Essential Medicines, including the WHO analgesic ladder for cancer pain relief, and on the legal requirements for prescribing and dispensing controlled medicines.
- Allocate sufficient funds and personnel to implement all of the above stated objectives.

4. Ensuring that "treatment" which is not evidence based is discontinued

Finally we wish to point out that, while the draft laudably indicates that the drug treatment should be evidence- based,, it does not refer to the fact that "treatment" which is not evidence based should be discontinued. In a large number of countries, state and non-state actors are resorting to antiquated methods of treatment, including starvation, torture, etc to force drug users to give up the consumption of drugs. There are even some reports alleging that such non-scientific methods lead to the death of drug users. This has to be actively discouraged. We would commend if a specific paragraph on this could be included encouraging States to ban non-evidence based strategies, both, in state or non-state controlled institutions.

Please accept, Ms. Ashipala-Musavyi, the assurances of our highest consideration.

Manfred Nowak
Special Rapporteur on Torture

Anand Grover
Special Rapporteur on the right to the
highest attainable standard of health

[i] UNGA Res 61/183 (13 March 2007) UN Doc A/RES/61/183 para 1; See also, for example, the previous year's resolution UNGA Res 60/178 (22 March 2006) UN Doc A/RES/60/178 para 1.

[ii] UNGASS Res S-26/2, UN Doc A/RES/S-26/2, 2 August 2001, para. 52, and UNGA Res 60/262, UN Doc A/RES/60/262, 15 June 2006, para. 22.

[iii] See International Covenant on Economic Social and Cultural Rights (ICESCR), adopted December 16, 1966, GA Res 2200A (XXI) U.N. Doc. A/6316 (1966), article 12; see also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc E/C.12/2000/4 (2000), para. 34; Key international instruments establish the general consensus that persons in detention are entitled to a standard of health care equivalent to that available in the general community, without discrimination based on their legal status; some instruments set out specific requirements to achieve this. See United Nations Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution 45/111 (1990); WHO Guidelines on HIV Infection and AIDS in Prisons (1999), arts. A (4) and C (ii); the Body of Principles for the Protection of All Persons Under any form of Detention or Imprisonment, UN GA Res 43/173 (1988); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) GA Res 40/33, annex, 40 UN GAOR Supp (No 53) at 207, UN Doc A/40/53 (The Beijing Rules); Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules' (adopted 11 January 2006 by the Committee of Ministers at the 952nd meeting of the Ministers' Deputies) (European Prison Rules).

[iv] International Harm Reduction Association (2008), "Global State of Harm Reduction 2008: Mapping the response to drug-related HIV and hepatitis C epidemics"; WHO, UNAIDS, and UNODC (2004), "Policy Brief: Reduction of HIV Transmission in Prisons."

[v] International Harm Reduction Association (2008), "Global State of Harm Reduction 2008: Mapping the response to drug-related HIV and hepatitis C epidemics".

[vi] Declaration of Commitment on HIV/AIDS and Political Declaration on HIV/AIDS: focus on progress over the past 12 months, Report of the Secretary General, UN Doc No A/61/816, 20 March 2007, para 53.

[vii] See Committee against Torture, "Concluding Observations: New Zealand" UN Doc A/53/44 19, 1998. para 175; Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," UN Docs A/62/221, para 9; A/HRC/7/3/Add.7, paras 29, 36, 67, 87; A/HRC/7/3/Add.4, para 37;; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "CPT standards," CPT/IN/E, 2002, section 3; European Court of Human Rights (ECHR), *Pantea v. Romania*, (Application no. 33343/96), judgment of June 3, 2003.

[viii] Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that "[n]o State Party shall expel, return (*'refouler'*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." Article 7 of the International Covenant on Civil and Political Rights likewise provides that '[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. The UN Human Rights Committee has interpreted this provision to bar states from "expos[ing] individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement." See also UN Human Rights Committee (HRC), General Comment No. 20, Prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 7) (1992), para. 9.

[ix] See UN Human Rights Committee, 'Concluding observations of the Human Rights Committee: Thailand" (8 July 2005, UN Doc. No. CCPR/CO/84/THA, para. 14; UN Human Rights Committee, 'Concluding observations of the Human Rights Committee: Kuwait" (27July 2000), UN Doc CCPR/CO/69/KWT, para. 13; Commission on Human Rights, "Report of the special rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston" (29 January 2007), UN Doc A/HRC/4/20, paras. 51-53.

[x] Judge v. Canada, Human Rights Committee, Communication No. 829/1998, CCPR/C/78/D/829/1998 (5 August 2002).

[xi] Preamble of the Single Convention on Narcotic Drugs (1961), http://www.unodc.org/pdf/convention_1961_en.pdf (accessed November 18, 2008).

[xii] INCB, Availability of Opiates for Medical Needs: Report of the International Narcotics Control Board for 1995, Vienna: INCB, 1995; Report of the International narcotics Control Board for 1999, UN Doc E/INCB/1999/1, Chapter I: "Freedom from Pain and Suffering.

[xiii] World Health Organization Briefing Note, *Improving Access to Medications Controlled under International Drug Conventions*, September 2008.

[xiv] UN CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc E/C.12/2000/4 (2000), para. 43.