



**Doc. 15086**

21 February 2020

## Drug policy and human rights in Europe: a baseline study

### Report<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Hannah BARDELL, United Kingdom, Members not belonging to a Political Group

### Summary

While old and emerging patterns of drug use, drug related harm and drug related crime have put countries to the test, an increasing number of member States have developed sustainable solutions by bringing human rights into drug policies.

This report describes, through concrete examples, how human rights standards should form an integral part of drug policy development, implementation, monitoring and evaluation. It takes a proactive and holistic approach to counter societal problems related to drugs in a way that fully respects human rights.

Political and infrastructural obstacles need to be identified and addressed to allow for the implementation of effective and human rights-compatible responses.

While measuring the success and coherence of drug policies is not an easy task, the report advocates for the adoption of evaluation mechanisms and indicators tailored to a new understanding of drugs and related harm. Such indicators should provide guidance to member States taking on the challenge to review the impact of their drug policies on individuals and societies.

---

1. Reference to committee: [Doc. 14587](#), Reference 4396 of 8 October 2018.



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Draft recommendation .....	5
C. Explanatory memorandum by Ms Hannah Bardell, Rapporteur .....	6
1. Introduction .....	6
1.1. Procedure .....	6
1.2. Issues at stake .....	6
1.3. Objectives for the report .....	7
2. Global shift towards mainstreaming human rights into drug policies .....	7
2.1. Evolving priorities for the global drug control regime .....	7
2.2. Europe's leading role on integrating human rights into drug policies .....	8
3. A human rights-based approach to drug policy .....	8
3.1. Defining a human rights-based approach to drug policy .....	8
3.2. Evaluating and remedying the effects of drug policies on human rights .....	9
4. Measuring the impact of human rights-based responses to drug problems .....	10
4.1. Identification of new rights-based indicators for measuring the effectiveness of drug policies ..	10
4.2. Implementing comprehensive data collection methods .....	10
5. Concrete examples to incorporate human rights into drug policies .....	11
5.1. Prevention of drug use and abuse .....	11
5.2. Harm reduction .....	12
5.3. Treatment and rehabilitation services .....	13
5.4. Law enforcement and human rights .....	14
6. Cross-cutting human rights issues in drug policies .....	15
6.1. Women and girls .....	15
6.2. Children and young people .....	16
6.3. Other members of societies exposed to particular risks .....	17
7. Conclusions .....	17

## A. Draft resolution<sup>2</sup>

1. The Parliamentary Assembly welcomes recent global commitments to address and counter societal problems relating to psychoactive substances (hereafter referred to as 'drugs') with full respect for all human rights and fundamental freedoms, and an increasing emphasis on a sustainable, comprehensive, balanced and evidence-based approach. It reiterates its previous calls for a European convention on promoting public health policy in drug control ([Resolution 1576 \(2007\)](#)).
2. The Assembly notes that strong evidence suggests that purely repressive policies which overlook the realities of drug use and dependence have been counterproductive and generated large-scale human rights abuses. These include highly damaging spill-over consequences in terms of public health and mortality rates, violence and corruption, discrimination, stigmatisation and marginalisation, disproportionate sentencing and prison overcrowding.
3. The principle of subsidiarity gives Council of Europe member States a significant margin of appreciation for drug policy development, within the bounds set by their obligations under international law, including the European Convention on Human Rights. In this respect, the Assembly welcomes the recent publication of International Guidelines on Human Rights and Drug Policy, by United Nations bodies, States and civil society. Member States should assess whether the intended and unintended effects of drug-related measures are consistent with international human rights standards and adapt these measures accordingly.
4. The Assembly therefore calls upon member States to:
  - 4.1. optimise human rights protection in the implementation of drug control policies, in particular by:
    - 4.1.1. ensuring that monitoring, evaluation and State investment in drug-related policies are transparent, sustainable, adequate and duly take human rights into account;
    - 4.1.2. identifying relevant indicators of the effectiveness of drug policies in meeting international human rights obligations and the global Sustainable Development Goals;
    - 4.1.3. using accurate, reliable and objective data collection methods on the effects of national drug policies on health, crime and equality, in close co-operation with regional and international networks promoting efficient, evidence- and rights-based tools and standards in all areas of drug policy;
  - 4.2. ensure that drug-related prevention measures are evidence-based, proportionate, and adapted to different social contexts, age-groups and levels of risk, in particular by:
    - 4.2.1. encouraging a public health approach with non-stigmatising attitudes and language, protecting people who use drugs from suffering discrimination, exclusion or prejudice;
    - 4.2.2. prioritising honest information and education on the risks of drugs for the health and safety of people who use drugs (in particular children and young people) and to others;
    - 4.2.3. encouraging safety through knowledge by providing information on drug-related services, safer drug-taking practices and drug-testing to prevent the consumption of unreliable and potentially lethal street drugs;
  - 4.3. use risk and harm reduction as well as treatment and rehabilitation services as a means to reduce adverse health and social effects of drugs, reflecting a more human rights-based approach, in particular by:
    - 4.3.1. treating drug disorders and addictions as complex chronic medical conditions and risks for social marginalisation;
    - 4.3.2. reviewing laws, policies and practices that may have disproportionate effects on the voluntary and non-discriminatory access to good quality risk- and harm-reduction and health services for drug-dependent people;
    - 4.3.3. providing equivalence and continuity of care for people who use drugs in prisons or other custodial settings, and safeguard the health of drug-dependent prisoners;
    - 4.3.4. ensuring that individuals have given informed consent before entering treatment and rehabilitation programmes and discouraging non-consensual court ordered treatment for drug dependent people;

---

2. Draft resolution adopted by the committee on 15 November 2019.

4.3.5. ensuring that drug dependence treatment is free from torture, inhuman or degrading treatment, forced labour or other human rights abuses;

4.4. ensure that criminal justice responses to drug-related crimes respect human rights, legal guarantees and due process safeguards pertaining to criminal justice proceedings, in particular by:

4.4.1. ensuring that arbitrary arrest and detention, as well as the use of excessive force and disproportionate sentencing against people who use drugs are effectively prohibited, and allegations of such abuse promptly investigated and acted upon, in accordance with international standards;

4.4.2. exhausting all available alternatives before incarcerating drug-related offenders;

4.4.3. strengthening national, regional and international co-operation and efforts to eliminate human rights abuses by drug trafficking organisations and transnational organised criminal groups;

4.4.4. withholding support for international drug-enforcement co-operation activities to the extent that they contribute to the execution, unlawful arrest or detention of persons for drug-related offences;

4.5. provide equal and effective protection of people who use drugs from multiple forms of discrimination in drug policy design and practice. Drug policies should be gender sensitive, address socio-economic factors and respond to differentiated needs, risks and harms faced, in particular, by certain members of societies, including women, children and youth, ethnic, migrant and LGBTI communities, sex workers and homeless people, and members of other vulnerable groups.

5. Bearing in mind the forthcoming 50th anniversary of the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs ("Pompidou Group") and the anticipated revision of its statute in 2021, the Assembly recognises the important role it plays as a drug policy co-operation platform for member States. It calls on those member States that are not members of the Pompidou Group to join and on all member States to co-operate fully in its activities.

6. The Assembly calls on the Council of Europe Congress of Local and Regional Authorities to consider supporting the development of rights-based policies on drugs at a local and regional level and ensure that every nation and region can implement policies appropriate to them under these guiding principles.

## **B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly recalls its Resolution XXX (2020) “drug policy and human rights in Europe: a baseline study”.
2. The Assembly calls on the Committee of Ministers to:
  - 2.1. ensure that the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (“Pompidou Group”)’s mandate, currently under review for a revised Statutory Resolution, fully supports human rights as a cornerstone of drug policy in Europe;
  - 2.2. support the Pompidou Group’s work in developing tools to assess national policies’ implications for individuals and rights-based indicators, in co-operation with other relevant institutions;
  - 2.3. adopt authoritative, comprehensive and concrete guidance to member States in this area of policymaking, with meaningful participation of all relevant stakeholders;
  - 2.4. encourage the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to pay particular attention to the availability, accessibility and quality of harm reduction measures and drug addiction treatment when conducting visits to prisons and other places of deprivation of liberty.

---

3. Draft recommendation adopted by the committee on 15 November 2019.

## C. Explanatory memorandum by Ms Hannah Bardell, Rapporteur

### 1. Introduction

#### 1.1. Procedure

1. On 8 October 2018, the motion for a resolution on “Drug policy and human rights in Europe: a baseline study” (Doc. 14587) was referred to the Committee on Legal Affairs and Human Rights (the committee) for report and the Committee on Social Affairs, Health and Sustainable Development (the Social Affairs Committee) for opinion. I was appointed rapporteur by the committee at its meeting in Paris on 13 December 2018.

2. A hearing was held on 4 March 2019 with the participation of Mr Damon Barrett, Director of the International Centre on Human Rights and Drug Policy (University of Essex, United Kingdom), Lecturer at the Section for Epidemiology and Social Medicine (University of Gothenburg, Sweden) and Expert for the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group), Ms Naomi Burke-Shyne, Executive Director, Harm Reduction International (London) and Mr Zaved Mahmood, Human Rights and Drug Policy Advisor, Office of the United Nations High Commissioner for Human Rights (OHCHR, Geneva, Switzerland).

3. I carried out a fact-finding visit to a drug consumption room in Strasbourg on 28 June 2019 and shared with committee members a video of interviews of people who used the facility. I take this opportunity to thank its staff and the city of Strasbourg for their valuable cooperation. I also conducted fact-finding missions in my parliamentary constituency and surrounding areas to meet local authorities, professionals, local organisations, charities, and people who use drugs. I sent a questionnaire to national parliaments to examine policies across Europe and I thank the 27 participating member States and one observer State (Israel) for their helpful feedback.<sup>4</sup>

4. I take this opportunity to thank all experts, and in particular the Pompidou Group's Secretariat and Amnesty International, who kindly supported the preparation of this report.<sup>5</sup>

#### 1.2. Issues at stake

5. Today's challenges around societal problems associated with psychoactive substances (hereafter referred to as “drugs”) involve a multifaceted and complex policy area, including laws, regulations, strategies and funding priorities. Over the years, countries in Europe and beyond have faced evolving patterns of drug use, drug related harm and drug related crime. These can be closely interconnected with the effects of wars, conflicts, terrorism, trafficking in human beings, economic/financial instability and the criminal misuse of modern information and communication technologies (such as encrypted networks) they are confronted with. According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)'s [2019 European Drug Report](#) (EDR), drugs are widely available and in some areas even increasing in availability. Polydrug consumption is common and individual patterns of use range from experimental to habitual and dependent consumption. According to the UN [2019 World Drug Report](#) (WDR), “in 2017, an estimated 271 million people, or 5.5% of the global population aged 15–64, had used drugs”.

6. This so-called “drug problem” has generated severe harm and risks for the health and safety of those concerned and societies in general. Individual vulnerabilities and the social context in which drugs are consumed often aggravate the situation. According to the [2019 WDR](#), some 35 million people globally suffer from drug use disorders which require treatment. More than 11 million people worldwide inject drugs. Among those, roughly one in eight people live with human immunodeficiency viruses (HIV). 5.6 million live with hepatitis C. More than half a million people worldwide died as a result of drug use in 2017. More than half of those deaths were the result of untreated hepatitis C. In Europe, an ageing cohort of opioid users remains a health concern; cocaine users also increasingly seek treatment, most often for polydrug use.

7. Until recently, there was a global understanding that the best way to deal with drug-related issues was to focus on reducing, and ultimately eliminating, the illicit production, supply and use of narcotic and psychoactive substances. The Social Affairs Committee [noted in 2015](#) that “drug-control efforts [...] focusing on repression have been responsible for generating large-scale human rights abuses, including the violation of the right to health, and disastrous consequences in terms of public health.”<sup>6</sup> For instance, repression may

---

4. A summary of the replies is available in a committee information note ([AS/Jur/Inf \(2019\)12](#)).

5. Amnesty International, [submission](#) to the committee, 2019.

lead to contaminated and more harmful drugs of unknown quality being sold and riskier methods of drug use being sought. History reveals indeed that there has never been any society without psychoactive drugs, begging the question whether a world free of drugs is a realistic aim. Strong evidence also suggests that the consequences of purely repressive policies include also death, violence, ill-treatment, discrimination, stigmatisation, marginalisation, disproportionate sentencing and prison overcrowding.<sup>7</sup>

8. The principle of subsidiarity reflected in international human rights instruments, including the European Convention on Human Rights (the Convention), gives Council of Europe member States a significant margin of appreciation for drug policy development – and there is evidently a wide array of possible responses based on national, cultural and economic contexts. Recent developments in drug policy have put increasing emphasis on a comprehensive, integrated, balanced, and scientific evidence-based approach which closely intersects public health, socio-economic, human rights, sustainable development and decriminalisation governments responsibilities.

### 1.3. Objectives for the report

9. This report describes, through concrete examples, how human rights' standards should form an integral part of drug policy development in member States. While measuring the success and coherence of drug policies is not an easy task, the report advocates for the adoption of evaluation mechanisms and indicators tailored to a new understanding of drugs and related harm. Such indicators should provide comprehensive guidance to member States taking on the challenge to review the impact of their drug policies on individuals and societies.

## 2. Global shift towards mainstreaming human rights into drug policies

### 2.1. Evolving priorities for the global drug control regime

10. The current globally applicable legal framework on drug control includes three [United Nations \(UN\) Conventions](#): the Single Convention on Narcotic Drugs (1961, as amended by the 1972 Protocol), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). This legal framework for the global “war on drugs” in theory provides “sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs, consistent with the principle of common and shared responsibility and applicable international law.”<sup>8</sup> Yet it has been increasingly criticised by high level experts and institutions for laying down an inflexible, outdated and counterproductive approach, overlooking the realities of drug use and dependence.<sup>9</sup>

11. In 2009, UN Member States reaffirmed their “commitment to ensure that all aspects of demand reduction, supply reduction and international cooperation are addressed in [full respect for] all human rights.”<sup>10</sup> In 2015, however, [the UN Special Rapporteur on the Right to Health argued that](#) “while such language is welcome, it becomes meaningless unless underpinned by clear and explicit human rights standards and principles”; “this pledge only represents a consensus-based commitment repeated in different fora that remains far from being realized”. The outcome document of the UN General Assembly Special Session on the world drug problem held in April 2016 (UNGASS 2016) reaffirmed the 2009 commitment and made operational recommendations. In March 2019, Government ministers at the Commission on Narcotic Drugs (CND) renewed their commitment to the UNGASS 2016 outcome document.<sup>11</sup> The UN Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions a year later [observed](#) that governments had

---

6. The right to health is recognised in Articles 11 and 13 of the [revised European Social Charter](#) (ETS No. 163), which reinforced obligations under Articles 2 (right to life) and 3 (prohibition of torture, inhuman and degrading treatment) of the European Convention on Human Rights. See also the [World Health Organisation \(WHO\) Constitution](#) signed in New York, 22 July 1946.

7. Pompidou Group, Barrett D., [Drug policy and Human Rights in Europe: Managing tensions, maximising complementarities](#), 2018; Pompidou Group, [Costs and spill-over consequences of drug policies](#), 2018. See also, Office of the High Commissioner for Human Rights (OHCHR), [Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights, A/HRC/39/39](#), 2018.

8. Chairperson of the Commission on Narcotic Drugs (CND)'s 61st session, [Accelerating collective efforts to address and counter the World Drug Problem based on common and shared responsibility](#), 2018.

9. See for example, [statement](#) by the UN High Commissioner for Human Rights, 2019; Global Commission on Drug Policy (GCDP), [Regulation – The Responsible Control of Drugs](#), 2018.

10. UN Office on Drugs and Crime (UNODC), [Political Declaration and Plan of Action on International cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem](#), 2009.

“recognised explicitly that the ‘war on drugs’ – be it community based, national or global – does not work. And further, that many harms associated with drugs are not caused by drugs, but by the negative impacts of [...] badly thought out, ill-conceived drug policies [which] not only fail to address substantively drug dependency, drug-related criminality, and the drug trade, [...] they add, escalate and/or compound problems”.

## **2.2. Europe’s leading role on integrating human rights into drug policies**

12. The Parliamentary Assembly of the Council of Europe (the Assembly) has, since its 2007 report “[For a European convention on promoting public health policy in drug control](#)”, called several times for a shift from punitive models to policies that are focused on public health, including policies for prevention, education, treatment, rehabilitation, social reintegration and harm reduction. The Social Affairs Committee highlighted that the resulting benefits of such measures already carried out by certain member States “have been felt by society as a whole, through reductions in the incidence of criminal behaviour, reduced costs for health and criminal justice systems, reduced risks of transmission of HIV and other blood-borne viruses, and, ultimately, reduced levels of drug use”.<sup>12</sup>

13. Member States have increasingly recognised their responsibility to ensure drug policies comply with international human rights law,<sup>13</sup> including the Convention as interpreted in the caselaw of the European Court of Human Rights and the European Social Charter, to which most are also bound, and other pertinent standards of Council of Europe bodies.

14. The Council of Europe’s Pompidou Group plays a crucial role as the drug policy co-operation platform for member States. The November 2018 “[Stavanger Declaration](#)” of its Ministerial Conference reaffirmed a focus on “human rights as a fundamental cornerstone in drug policy, in line with the Council of Europe’s core mission”. Recognising the 2016 UNGASS outcome document as “a milestone”, the Ministers reflected on the possibility of changing the official title of the Pompidou Group “to more adequately reflect today’s drug policy evolution and challenges, and subsequently to initiate a broader reflection on the Group’s mandate, operation and working methods.” In January 2019, the Committee of Ministers took note of this decision, which could culminate in the adoption of a revised Statutory Resolution in 2021, on the occasion of the Pompidou Group’s 50<sup>th</sup> anniversary.<sup>14</sup>

15. The EMCDDA has since 1993 provided data on drug-related issues in member States of the European Union (EU). The [EU Drugs Strategy for 2013-2020](#) and the [EU common position on UNGASS 2016](#) recall its member States’ commitments to human rights as an integral part of drug policy.

## **3. A human rights-based approach to drug policy**

### **3.1. Defining a human rights-based approach to drug policy**

16. There is little existing consensus on what a ‘human rights-based approach’ means for the design, implementation, monitoring and evaluation of drug policies. The absence of such agreement obviously complicates member States’ efforts to implement effective harmonised policies. Less than half of the countries that replied to the questionnaire specify explicitly human rights as a base principle for their drug-related strategies. Progress is, however, being made.

---

11. United Nations General Assembly, [Our joint commitment to effectively addressing and countering the world drug problem](#), Resolution S-30-1, 2016; CND, [Ministerial declaration](#) on “Strengthening our actions at the national, regional and international levels to accelerate the implementation of our joint commitments to address and counter the world drug problem”, 2019.

12. [Resolution 1576 \(2007\)](#), [Recommendation 1813 \(2007\)](#), Reply to the Recommendation by the Committee of Ministers ([Doc.11620](#)) and Report ([Doc.11344](#)). See also, Assembly President’s [statement](#) on the occasion of the global day of action for the ‘Support, don’t punish’ Campaign, 2015; Social Affairs Committee’s [call for a public-health-oriented drug policy](#), 2015.

13. All member States of the Council of Europe have ratified or acceded to the [International Covenant on Civil and Political Rights](#) (1976), the [International Covenant on Economic, Social and Cultural Rights](#) (1976), the [Convention on the Rights of the Child](#) (1990), and the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (1981), among other relevant and more specific treaties.

14. Pompidou Group, [Stavanger Declaration](#), 2018; Committee of Ministers, [CM/Del/Dec\(2019\)1335/6.1](#).

17. Member States are shifting towards a more balanced approach between actions to relieve people who use drugs from addictions and marginalisation, and fighting drug trafficking and other related crime. It is usually accompanied by the transfer of the overall competence for the co-ordination of drug policy from the Ministry of Interior to the Ministry of Health (for instance Croatia, Georgia, Germany, Latvia, Montenegro, Netherlands, Norway, Poland, Portugal, Slovenia).

18. In 2017, the Pompidou Group listed in a [statement](#) several commitments necessary for member States to take full account of human rights. At EU level, the EMCDDA has also developed [guidelines on health and social responses to drug problems](#) and a [portal of best practices](#). In March 2019, a set of [International Guidelines on Human Rights and Drug Policy](#) were launched following a two-year global, multi-stakeholder process involving governments, civil society, academia, and United Nations agencies. These guidelines analyse human rights norms and apply them to drug policy. The guidelines describe obligations that shall or should arise from human rights standards such as the right to the highest attainable standard of health, to life, to a fair trial, to privacy as well as the right to live free from torture, inhuman and degrading treatment or punishment, or arbitrary arrest and detention.

19. Some of these rights and freedoms can be connected to the Convention, which member States are bound to. However, the Court, which oversees the application of the Convention, has not provided extensive guidelines for national drug policies. As far as certain (non-absolute) rights are concerned, the Court leaves a wide margin of appreciation to member States. Nevertheless, the Convention as interpreted by the Court can provide useful pointers when examining drug policy from a human rights perspective. In general, member States shall search for a fair balance between the general interest of the community and the protection of the individual's fundamental rights.<sup>15</sup> States may interfere with certain (non-absolute) rights if, for example, it is necessary to protect children or preserve public health and safety. However, this requires them to demonstrate that measures are necessary to achieve the objectives they are intended for and that no less restrictive means are available to achieve the same aims.

20. There are various ways in which the Council of Europe and its organs and bodies could contribute to developing standards for harmonising drug policy. As mentioned above, in 2007, the Assembly recommended that the Council of Europe adopt a European Convention on promoting public health policy in drug control. The Pompidou Group has also [called](#) for "concrete guidance from the bodies entitled to interpret and construe international human rights law, including the Court." The Assembly should encourage member States and the Committee of Ministers to pursue work in this area and adopt an authoritative, comprehensive and concrete guidance on human rights and drug policy. Such work should ensure meaningful participation of all stakeholders in all stages of the process. Stakeholders include all member States, local and regional authorities (possibly with the participation of the Council of Europe Congress of Local and Regional Authorities), relevant regional and international institutions, civil society and in particular, people who use drugs.

### **3.2. Evaluating and remedying the effects of drug policies on human rights**

21. Further to their existing legal obligations, States should assess the intended and unintended effects of envisaged drug policy measures, taking into account their potential impact on the enjoyment of human rights. For example, the European Social Charter requires that policies respect the right to benefit from measures enabling individuals to enjoy the highest possible standard of health attainable. The so-called "3AQ" test can be used to examine whether the health services are "Available, Accessible, Acceptable and of Sufficient Quality" for all persons with drug disorders or addictions. Sub-standard healthcare provision in prisons deserves particular attention. According to the principle of equivalence generally applicable to health care in detention, prisoners who suffer from drug disorders or addictions should receive care that is equivalent to that which is provided outside of prison.<sup>16</sup>

22. By performing this cautious human rights-based review, States may regularly adapt drug policies to current developments and the most accurate, reliable and objective evidence available on costs, impacts and discriminatory effects of drug policies. Mechanisms must be put in place to ensure that appropriate remedies are taken when drug-related laws, policies and practices are inconsistent with international human rights standards.

---

15. *Soering v the United Kingdom*, No. 14038/88, 7 July 1989.

16. See European Prison Rules, Committee of Ministers' [Recommendation Rec\(2006\)2](#), 2006; Committee of Ministers' [Recommendation Rec\(98\)7](#) concerning the ethical and organisational aspects of health care in prison, 1998; CPT's 3<sup>rd</sup> *General report*, [CPT/Inf\(93\)12-part](#), 1993; *Khudobin v Russia*, No. 59696/00, 26 October 2006; op. cit. Pompidou Group, Barrett D., 2018.

23. Capacity building of policymakers and meaningful participation of affected communities (i.e. people who use drugs, their families and the wider community) and civil society is essential in the development (design and implementation) of well-informed drug policies tailored to vulnerabilities and needs. States should guarantee a safe and enabling environment for human rights defenders who advocate reforming drug laws and policies, and who shall be able to conduct their activities without fear of punishment, reprisal or intimidation.<sup>17</sup>

#### 4. Measuring the impact of human rights-based responses to drug problems

##### **4.1. Identification of new rights-based indicators for measuring the effectiveness of drug policies**

24. The search for evidence-based and comprehensive drug-related policies requires a transparent and effective methodology to assess their success. In this context, the collection of data should be based on specific and comprehensive indicators of the process and outcomes of drug policies. These should provide insight on emerging drug-related trends and guide policymakers in the development of sustainable interventions respectful of human rights. Improved data on drug-related public expenditure should also help direct resources towards more efficient investments and improve transparency and accountability of public institutions.<sup>18</sup>

25. There is a growing realisation that traditional indicators focused on the process of drug policies (namely, arrests, seizures and criminal justice responses) are inadequate to show their real impact on individuals and communities. The International Drug Policy Consortium (IDPC), for example, explained that “if drug control no longer has a singular focus on reducing cultivation, trafficking and use – but rather on minimising drug-related health harms, improving access to healthcare, upholding basic human rights, reducing poverty, improving citizen safety and reducing corruption – the use of indicators focusing on measuring the scale of and flows within the illegal drug market will no longer be enough.”<sup>19</sup>

26. Indicators should be tailored to existing national, regional and international human rights standards. A range of relevant human rights indicators can already be extracted from the work of Council of Europe and other national, regional and international bodies.<sup>20</sup> Indicators can aim to collect data on the root causes of drug-related harm at all stages in the supply chain (cultivation, production, distribution, use). It would include indicators such as the availability and coverage of harm reduction and treatment, the socio-economic situation of people who use drugs, reported cases of stigma and discrimination in accessing healthcare, reported cases of physical and psychological abuse by law enforcement, reported cases of human rights abuses against people who use drugs by criminal networks, reported cases of corruption associated with illicit markets, provision of legal aid during trial, and proportion of drug offenders held in pre-trial detention. Data should be disaggregated for example by age, sex, race and ethnicity, sexual orientation and gender identity, economic status (including involvement in sex work). Sustainable Development Goals targets and impact-oriented indicators should also be considered; as the overarching goal is to “leave no one behind”.<sup>21</sup>

##### **4.2. Implementing comprehensive data collection methods**

27. Data reporting methods and tools need to be designed and constantly readjusted for member States to collect and evaluate quality and meaningful statistics on the effects of drug policies on human rights.

---

17. Pompidou Group, [Government interaction with Civil Society](#), 2015; op. cit. Pompidou Group, Barrett D., 2018; OHCHR, [Guidelines for States on the effective implementation of the right to participate in public affairs](#), 2018; op. cit. Amnesty International, 2019.

18. Pompidou Group, [Coherence policy markers for psychoactive substances](#), 2014.

19. IDPC and Global Drug Policy Observatory (GDPO), [Identifying new indicators for the assessment of drug policy](#), 2019. See also, GDPO, Bewley-Taylor D. R. and Nougier M., [Measuring the “world drug problem”: ARQ Revision. Beyond traditional indicators?](#), 2018.

20. See IDPC list of indicators with regard to “Human rights, youth, children, women and communities”, [Taking stock: A decade of drug policy – A civil society shadow report](#), 2018; OHCHR, [Human Rights Indicators: A Guide to Measurement and Implementation](#), 2012; OHCHR, [A human rights-based approach to data, Guidance note to data collection and disaggregation](#), 2018; Centre on Drug Policy Evaluation (CDPE), [Drug Policy Metrics Map](#), 2018.

21. See [Resolution 2271 \(2019\)](#) “Strengthening co-operation with the United Nations in implementing the 2030 Agenda for Sustainable Development” and [Resolution 2272 \(2019\)](#) “Implementation of the Sustainable Development Goals: synergy needed on the part of all stakeholders, from parliaments to local authorities”. See also, [Statement](#) by the Pompidou Group’s Portuguese Presidency, CND’s 62nd session, 2019.

28. The Council of Europe is also in a position to support national structures, in particular national drug observatories. The Pompidou Group supports the setting up of national observatories within MedNET, its network of co-operation in the Mediterranean Region covering 17 countries (including seven non-members of the Pompidou Group, namely Algeria, Egypt, Lebanon, Morocco, Palestine<sup>22</sup>, Spain and Tunisia).<sup>23</sup> The Pompidou Group could serve as a platform for the exchange of information in order to identify gaps in relevant statistical tools and other drug monitoring systems. The Group has indicated in its [2019-2022 work programme](#) its intention to initiate a repository on drug-related national practices and their impact on the realisation of human rights' obligations.

29. National authorities should support expert civil society networks as well as networks of national and local authorities and elected representatives. They should seek to co-operate with relevant institutions such as the EMCDDA and UN bodies, whose role was underlined in the November 2018 UN common [position on drug policy](#). The UN Office on Drugs and Crime's (UNODC) Annual Reports Questionnaire (ARQ) is currently being revised in order to facilitate the UNGASS [outcome document](#)'s recommendation that States collect age- and gender-related data and "consider, on a voluntary basis, [...] the inclusion of information concerning, inter alia, the promotion of human rights and the health, safety and welfare of all individuals, communities and society in the context of their domestic implementation of [drug-control] conventions, including recent developments, best practices and challenges".

30. A revised ARQ should provide a good working basis for European policymakers, depending on the quality and extent of its data. While the UNODC plans to define a road map for developing global standards and generating more and higher quality drug-related data, it is essential that the Council of Europe closely follows this process and participates in the work towards a common understanding of human rights' concepts and indicators for drug policies.<sup>24</sup>

## 5. Concrete examples to incorporate human rights into drug policies

### 5.1. Prevention of drug use and abuse

31. States should implement effective preventive measures to address the drug problem, such as educational programmes and awareness raising and preventive campaigns based on scientific evidence, in multiple settings (families, schools, communities, streets and party scenes, workplaces, etc.) and targeting relevant ages and levels of risk.<sup>25</sup> Governments should furthermore balance the preventative measures to ensure that they do not have unintended negative human rights consequences. For example, the mandatory testing of schoolchildren for drug use sometimes carried out randomly as a preventive measure has often raised human rights concerns and has been ultimately discouraged, as it fails the test of proportionality.<sup>26</sup>

32. Currently Scotland is beholden to the United Kingdom Government and is unable to properly and fully set its own policy surrounding drug issues. For example, Glasgow City Council and NHS Greater Glasgow and Clyde have proposed a City Centre drug consumption facility<sup>27</sup>, but this continues to be blocked by the Westminster Government, to whom drug policy is reserved. This is disappointing given that last year, there were twice as many drug related deaths in Dundee alone (a city with a population of about 148,000) than in the whole of Portugal. As a whole, Scotland's drug death toll is more than 30 times that of Portugal's, despite Portugal having a population of almost double in size<sup>28</sup>.

33. A human rights-centred approach such as Portugal's would therefore encourage promotion of a public health narrative with non-stigmatising attitudes and language, protecting people who use drugs from suffering discrimination, exclusion or prejudice. Criminalisation may lead to stigmatisation of people with drug disorders as criminals rather than patients. In circumstances where experimentation is likely to take place, education on the effects of drugs, and the risks both to people who use drugs and to others, is paramount. It would also be helpful to provide information on safer drug-taking practices and drug-testing to prevent the consumption of

22. This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

23. For information, Drug Observatories has been supported in the EU countries and Norway by the EMCDDA through the REITOX network.

24. UNODC, *Report on drugs and drug use statistics*, E/CN.3/2019/20, 2018.

25. WHO and UNODC, *International Standards on drug use prevention*, 2015.

26. Op. Cit. [A/HRC/39/39](#); op. cit. Pompidou Group, Barrett D., 2018.

27. NHS Greater Glasgow and Clyde, "Taking away the chaos": [The health needs of people who inject drugs in public places in Glasgow city centre](#).

28. *The Scotsman*, [Why Scotland can ill afford to ignore Portugal's ground-breaking war on drugs](#), 2019.

unreliable and potentially lethal street drugs.<sup>29</sup> The Global Commission on Drug Policy (GCDP) [recommended](#) that “if there were to be public awareness campaigns on youth and drug use, a possible way forward would be to give honest information, encouraging moderation in youthful experimentation and prioritising safety through knowledge”.

34. The ‘Icelandic model’ of prevention is also a noteworthy “bottom-up” approach which focuses on reducing known risk factors for substance use and developing socio-economic connections at a local level, while strengthening a broad range of community-related protective factors (such as the role of parents and schools and the network of opportunities around them). For instance, it aims to change unwanted behaviour by altering the physical, economic and regulatory aspects of the environment that provide or reduce opportunities for the behaviour to occur (e.g. supervised after-school leisure time with universal access to sport and cultural activities for youth).

## 5.2. Harm reduction

35. While there is no universally accepted definition of harm reduction, it can be described as a range of policies, programmes and measures that have a decisive impact on relieving societies from adverse health and social effects of drugs. These measures include Opioid Agonist Treatment (OAT), Drug Consumption Rooms (DCR), Emergency room interventions for acute drug intoxication and overdose cases in hospitals and in community settings, access to naloxone and training of potential first responders in overdose management, Needle and Syringe Exchange Programs (NSP), distribution of safer smoking kits, drug-checking services, services provided in night-life settings, and the provision of “safe-zones” where peer-led information can be shared. They have often proven to be cost-effective methods to preventing life-threatening and damaging consequences of ongoing drug use (such as deaths by overdoses, blood-borne infectious diseases, misuse of new substances) – and ultimately promoting the right to health.<sup>30</sup>

36. Various European and international experiences of harm reduction strategies have largely overcome negative public opinion and political opposition; thus counteracting stigmatising attitudes and discrimination. Most member States have to varying degrees embraced harm reduction.<sup>31</sup> The 2018 report on the “[Global State of Harm Reduction](#)” (GSHR) indicated that 17 of the 25 countries in Western Europe and 26 of the 29 countries in the region of Eurasia have policy documents supportive of harm reduction. The [EU’s Action Plan on Drugs for 2017-2020](#) has specifically aimed for a stronger focus on risk and harm reduction measures.

37. In the context of this report, I have paid particular attention to the development of DCRs in Europe, which has been very successful in recent decades. According to the 2018 GSHR, 89 DCRs exist in Western Europe, none in Eurasia. While the facility that I visited in Strasbourg is still too young to measure adequately its effects on public order and health, many other experiences around Europe have reported positive effects such as improved health and social indicators, lower health bills, improved housing and employment, reduced violence and prostitution, reduced public nuisance associated with open drug scenes, and improved cooperation with law enforcement officials. The House of Commons Health and Social Care Committee recommended the introduction of DCRs as a form of harm reduction, based on a Frankfurt case study and an explanation by the Deputy Chief Constable of the National Police Chief Council. It advises that these facilities would give an opportunity for drug users to be offered other types of support, as well as receive medical supervision.<sup>32</sup> It is clear that DCRs can only be effective if they are integrated into a wider public health policy including adequate laws, regulations and funding. Such facilities require an excellent knowledge of the territory’s practices and products being used as well as the parameters of the location chosen for the facility (needs in terms of security, type of neighbourhood, etc.). Conflicts can be avoided if all actors are invited to participate and regular feedback is provided to the community. Capacity building is key as well as the implementation of monitoring and evaluation mechanisms. Strasbourg is also part of a network called

---

29. See, for example, OHCHR, [Joint Open Letter](#), 2016; 2016 UNGASS [outcome document](#).

30. Pompidou Group, [Criminal Justice and Drug policy: Treatment, Harm Reduction and Alternatives to Punishment](#), 2017. As [reported by the OHCHR in 2018](#), Austria, Norway, Spain and Switzerland for instance support harm reduction as part of their public health strategies. According to [Harm Reduction International](#), higher rates of overdose deaths have prompted the implementation of naloxone overdose prevention programmes, such as the distribution of take-home kits from community outlets and prisons in [Scotland](#).

31. Op. cit. Pompidou Group, Barrett D., 2018. The Russian Federation does not support harm reduction in its legislation and has placed a complete ban on the provision of Opioid Agonist Treatment. This “blanket ban” is currently the subject of three joint applications to the Court on the grounds of Articles 3 and 8 combined with Article 14 of the Convention, i.e. [Kurmanayevskiy et al v Russia](#) (Nos 62964/10, 58502/11, 55683/13). See also, International Centre on Human Rights and Drug Policy, [Case information sheet](#), 2016.

32. House of Commons Health and Social Care Committee, [Drugs Policy](#), 2019.

“Solidify”, co-ordinated by the European Forum for Urban Security (EFUS), which aims to support cities in the deployment of a risk reduction policy by providing them with efficient tools to accompany the installations of DCRs.<sup>33</sup>

38. National experiences and reported challenges in the implementation of DCRs show that a holistic human rights approach can help protect individuals and societies from unintended consequences of the measures. These include arrests and seizures by police lacking training around harm reduction facilities (fixed and mobile), difficult accessibility due to isolated locations of these facilities, discriminatory criteria of access to services, lack of agreement and support from law enforcement with regard to responsibilities in cases of violent situations or other emergencies, poor safety standards for staff. Research by Harm Reduction International (HRI) showed that a decline in the funding of harm reduction facilities by both governments and international donors had a detrimental impact on individuals and public health, particularly in the context of prisons.<sup>34</sup> Systematic evaluations of harm reduction services can highlight issues and tensions with human rights. The participation of all stakeholders, in particular people who use drugs and law enforcement officials, in the design of harm reduction strategies and in regular follow-up community meetings and the exchange of information at local, national and international levels help resolve problems with due consideration of human rights.

39. Drug use is prevalent in European prisons. These are high-risk environments for transmission of infectious diseases such as HIV, hepatitis C and tuberculosis. Efforts to protect the health of detainees in the same way as outside prison have also led to the implementation of harm reduction within detention settings. However, access to harm reduction services in prison varies significantly between and within countries. According to the GSHR, four countries in Western Europe and five in Eurasia provide NSP in prisons. OAT is available in prison in all countries in Western Europe except Andorra, Iceland, Liechtenstein, Monaco, and San Marino, Turkey). 18 countries in the region of Eurasia provide OAT in prison (including Kyrgyzstan whose parliament enjoys partner for democracy status). In a [2014 report](#), the CPT indicated that various types of NSP consistently “improved prisoners’ health, reduced needle sharing and undercut fears of violence”, with “no evidence of increased drug consumption or other negative consequences” observed. A human-rights approach entails effective provision of assistance to prisoners with drug-related problems (as part of a wider national drugs strategy). This should include harm reduction measures, specific training for staff and the provision of adequate information material on drug-related issues and services available to detainees, psycho-social services and respect of medical confidentiality.<sup>35</sup> HRI has developed a supportive [monitoring tool](#) for oversight bodies to monitor harm reduction services provided to prisoners.

### **5.3. Treatment and rehabilitation services**

40. European policymakers are putting increasing emphasis on treating drug disorders and addictions as a complex chronic medical conditions (often in comorbidity with other mental health disorders) and risks for social marginalisation, rather than a crime. Unreliable and potentially lethal street drugs, poorly informed drug-taking practices and stigmatisation often increase the suffering of persons with drug problems and call for States to meet their obligations under their conventional shared duty to protect. The 2016 [outcome document](#) stated that “drug dependence can be prevented and treated through effective, scientific and evidence-based drug treatment, care and rehabilitation programmes”.

41. Mechanisms must be put in place to ensure the operation of drug treatment and rehabilitation services do not undermine or threaten the right to health and prevent any human rights abuses. Member States should for example prioritise health care and social support in community settings rather than institutions. To prevent “disciplinary treatment” approaches to proliferate, where drug-dependent individuals are forced into centres and subject to ill-treatment or forced labour, treatment should always involve the voluntary participation of individuals with drug use disorders, with informed consent.<sup>36</sup> Treatment and rehabilitation programmes must

---

33. See also, The Guardian, [Safe injection rooms are key to halting rise in drug deaths](#), 2019; EMCDDA, [Drug consumption rooms: an overview of provision and evidence](#), 2018.

34. HRI, [Global State of Harm Reduction](#), 2018.

35. CPT, Lehtmetts A., Pont J, [Prisons healthcare and medical ethics](#), 2014; CPT, [26th General Report](#), 2017; CPT visit to Ukraine in 2017, [CPT/Inf \(2018\)41](#).

36. For instance, Norway focuses on the 3AQ test for treatment services. Switzerland has developed a national addiction strategy focusing on the quality of life and the health of the individual. Op. cit. [A/HRC/39/39](#). See also, UN Secretary General, “Right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, [A/65/255](#), 2010; “Concluding observations on the seventh periodic report of the Russian Federation”, [CCPR/C/RUS/CO/7](#), 2015.

provide measures to protect the rights of any person who – temporarily or permanently – is unable to consent. States should monitor drug dependence treatment practices and inspecting treatment centres as well as places of detention, to ensure these are free from torture, inhuman or degrading treatment.

42. The right to health (cf. note 6) also requires States to review and change national policies that have a disproportionate effect on access to effective medical treatment, including essential medicines (such as controlled drugs used for OAT, pain management, palliative care). However, there are concerns about the harm arising from the misuse of prescription medications, including opioids.<sup>37</sup> I refer here to the current work of my colleague, Mr Joseph O'Reilly (Ireland, EPP/CD) with the Social Affairs Committee, on [involuntary addiction to prescription medicines](#).

43. With regard to prisoners, member States have a duty, according to the Court's case-law (*Kudła v. Poland* [GC], no. 30210/96) and the [European Prison Rules](#), to safeguard their health, and "deal with withdrawal symptoms resulting from use of drugs, medication or alcohol". As explained by HRI, "denying treatment to a person with a drug dependence can cause unbearable pain and suffering." The Court recognised in 2016 that the denial to grant treatment, including OAT, to prisoners with a drug dependency could constitute inhuman and degrading treatment.<sup>38</sup> States must ensure equivalence of care in prisons and other custodial settings, as well as continuity of care after admission to, or release from, prison.

#### **5.4. Law enforcement and human rights**

44. Law enforcement efforts have become more effective and strengthened international co-operation may help to increase interception illicit drugs. Despite considerable efforts, law enforcement bodies have not been able to sustain a decrease in the use and availability of drugs, nor eliminate human rights abuses by drug criminals, including trafficking and exploitation. The WDR 2019 states that effectively addressing the supply of drugs requires shifting the focus of law enforcement agencies from measuring success by quantities of drugs seized to dismantling drug trafficking organisations and transnational organised criminal groups. This objective requires a better understanding of the dynamics of organised crime and the design of effective counternarcotic interventions in co-ordination with national, regional and international institutions.

45. The UNGASS [outcome document](#) called for "effective drug-related crime prevention and law enforcement measures" as well as "effective criminal justice responses to drug-related crimes". To this aim, "legal guarantees and due process safeguards pertaining to criminal justice proceedings" and the right to a fair trial must be ensured. States recommitted on the same occasion to uphold the prohibition of arbitrary arrest and detention as well as the prohibition of torture, inhuman or degrading treatment or punishment. These commitments are also set out in the Convention, in articles 3 (prevention of torture), 5 (right to liberty and security), 6 (right to a fair trial), 14 (and Protocol No. 12 on the prohibition of discrimination) as well as protocol No. 6 (abolition of the death penalty).<sup>39</sup>

46. In practice, repressive law-enforcement measures to control drugs use have often been accompanied by excessive force or disproportionate sentencing and use of detention, with harmful effects on vulnerable persons.<sup>40</sup> This situation begs for a balanced and comprehensive approach through health-centred, rights-based criminal justice responses to drug-related crime. The CPT noted that "serious consideration should be given to the negative psychosocial impact of incarceration, particularly on young drug-dependent persons, the lack of appropriate treatment and rehabilitation facilities for drug dependency in prison settings". Efforts to exhaust all available alternatives (e.g. diversion, alternative sanctions, release on parole – combined with voluntary treatment offered in the community) before incarcerating drug-related offenders is the most pertinent rights-based strategy.<sup>41</sup> Detention should only be imposed where it is deemed reasonable, necessary and proportional. In this context, certain experts argue that the text of Article 5.1e) of the Convention, which allows

---

37. Harm Reduction International Conference, [Statement](#) by UN High Commissioner for Human Rights, 2019, Portugal; 2019 [World Drug Report](#).

38. *Wenner v Germany*, No. 62303/13, 2016; Junod V., Wolff H., et al, [Methadone versus torture: The perspective of the European court of Human Rights](#), 2018; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [A/HRC/22/53](#), 2013.

39. See for example on the right to a fair trial, *Vanyan v. Russia* (No. 53203/99, 2005).

40. A 2017 Council of Europe study on [Drug Treatment Systems in Prisons in Eastern and South-East Europe](#) indicated that the majority of people serving time in prisons are sentenced for minor drug offences. In contrast, countries such as Portugal, Spain and Switzerland reported a decrease in the percentage of prisoners sentenced for drug offences – an evidence that these countries are moving towards a less punitive approach to drug policy. See, Council of Europe, [Research on Prisons in Europe: 2005-2015](#). See also op. cit. [A/HRC/39/39](#); Report of the Working Group on Arbitrary Detention, [A/HRC/30/36](#), 2015.

for the “lawful detention of persons for the prevention of the spreading of infectious diseases, of [...] drug addicts”, could be considered outdated.<sup>42</sup> Indeed, in my personal opinion, people should not be detained solely on the basis of drug use or drug dependence.

47. Nearly a third of the countries that replied to my questionnaire indicated that they refrained from prosecuting minor drug-related offences, in order to prioritise public health, avoid worsening vulnerabilities and relieve prisons from overcrowding. In Europe, Portugal has been at the forefront of alternative drug policy models after facing a devastating drugs crisis. In 2001, while leaving the laws on drug trafficking unchanged, it turned the purchase or possession of small quantities (up to a 10-day supply) from a criminal into an administrative offense. Offenders are now summoned to a “Commission for the Dissuasion of Drug Addiction” hearing within the Ministry of Health. Only for quantities beyond the 10-day supply limit, a criminal procedure is launched.<sup>43</sup> This public health approach should be distinguished from the “drug treatment courts”, offering court supervised treatment for drug dependent people. These have been increasingly criticised for hampering access to voluntary, higher quality treatment, and for human rights violations that occur in compulsory treatment centres.<sup>44</sup> Some also argue that current drug policies interfere with the right to private life. Indeed, the prohibition of “recreational” drug-taking in private could interfere with or even violate the right to private life (especially in circumstances where there are no risks to children or public health).<sup>45</sup>

48. The death penalty has been prohibited in all member States. However, in a [joint declaration](#) on 10 October 2018, the Secretary General of the Council of Europe and the European Union High Representative for Foreign Affairs and Security Policy, urged European states not to co-operate with the implementation of drug policies in countries that apply the death penalty for drug offences.<sup>46</sup> At least 3,940 people were executed for a drug offence in the last decade. In the 2018 [Stavanger Declaration](#), the Pompidou Group encouraged governments to “actively work” against the death penalty for drug-related offences and to “condemn extra-judicial executions”. Some member States have reportedly discontinued support for international drug-enforcement co-operation activities that may directly or indirectly lead or contribute to the execution or any unlawful arrest of persons for drug-related offences.<sup>47</sup> In 2019, Mr João Goulão, President of the Pompidou Group, stated that “It is our great responsibility to encourage countries, where there is still a capital punishment for crimes related to drugs, to abolish this inhuman practice.”

## 6. Cross-cutting human rights issues in drug policies

49. The implementation of drug policies can have a profoundly disproportionate impact on people who use drugs on the basis of sex, race, colour, national or social origin, among others. Multiple forms of discrimination will impact on the lives of people who use drugs and create barriers to the full enjoyment of their human rights. Policies should address the root causes and socio-economic factors (for example inadequate standard of living, lack of social security) that may increase the risks of using drugs or that lead people to engage in the drug trade.

### 6.1. Women and girls

50. The Council of Europe [Convention on preventing and combating violence against women and domestic violence](#) (or “Istanbul Convention”) aims to protect women against all forms of violence, and eliminate all forms of discrimination against women.

51. Women who use drugs are particularly vulnerable to stigmatisation and marginalisation in the family and the community.<sup>48</sup> Women may be afraid to seek treatment, in particular if they are pregnant, survivors of gender-based violence and fear legal issues and social stigma. While the above-mentioned benefits of harm

---

41. Op. cit. CPT, Lehtmetts A., Pont J, 2014; CPT, [Factsheet on Healthcare services in prisons](#), 1993. See also, Pompidou Group, [Programme on Criminal Justice and Prison](#); EMCDDA, [Briefing on prisons and the criminal justice system](#).

42. Barrett D., [‘Drug addicts’ and the ECHR](#), 2018.

43. See [leaflet](#) on Dissuasion Commission by the General Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD), 2019. *The Guardian*, [Portugal’s radical drugs policy is working. Why hasn’t the world copied it?](#), 2017.

44. UN [Information note](#), *Drug courts pose dangers of punitive approaches encroaching on medical and health care matters*, 2019.

45. Irish Council for Civil Liberties (ICCL), [Submission](#) to the Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, on the review of Ireland’s approach to the possession of limited quantities of certain drugs, 2015.

46. Op. cit. IDPC. See also, the 2015 [joint declaration](#).

47. See also, HRI, [Death penalty for drug offences](#), 2018.

reduction facilities and drug treatment programmes encourage their promotion, authorities must be particularly attentive to removing any obstacles to women's equal quality and voluntary access to such health-oriented measures including holistic psychosocial, sexual and reproductive care. A gender-sensitive perspective, that responds to differentiated needs, risks and harms to women and girls, should always be mainstreamed into the design and implementation of drug policies, as recalled by the Pompidou Group's 2018 [Stavanger Declaration](#) and [ongoing work](#) on the gender dimension in drug policies. Ireland, for instance, has identified in its [national strategy](#) on drug use that the "absence of childcare can be a barrier for women attending treatment and after-care services" and aimed to increase "the range of wrap-around community and residential services equipped to meet the needs of women who are using drugs and/or alcohol in a harmful manner, including those with children and those who are pregnant". Austria and Cyprus' replies to the questionnaire, for example, have referred to gender-sensitive approaches in drug-related services.

52. Women and girls also continue to be particularly vulnerable to engaging in drug-related crimes, especially when they lack education and economic opportunities or have been victims of abuse. Prison settings are particularly concerning. According to HRI, in 2012, 31,000 of the women in prison across Europe and Central Asia were incarcerated for drug offences. This represented 28%, or more than one in four, of all women in prison in the region.<sup>49</sup> Thus, States at the [UNGASS 2016](#) committed to "identify and address protective and risk factors and conditions that continue to make women and girls vulnerable to exploitation and participation in drug trafficking, [...] with a view to preventing their involvement in drug-related crime". They also committed to ensuring "non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensur(ing) that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy."<sup>50</sup>

## 6.2. Children and young people

53. Young people are an important target group for many drug interventions as evidenced by the replies to the questionnaire. The Council of Europe has been engaged in the promotion of the UN Convention on the Rights of the Child and has developed a wide range of [legal standards](#) which apply to children's rights. Member States have committed to pursuing children's best interests, with due regard to their evolving capacities, by eliminating all forms of violence against children, including sexual violence, exploitation and corporal punishment; promoting child-friendly justice and social services; guaranteeing the rights of children in vulnerable situations, such as drug-related abusive living environments.<sup>51</sup> Authorities must protect children from the risk that the use of drugs or dependence of drugs by parents leads to neglect or abuse of their children. Always acting in the best interests of the child, States have an obligation to provide appropriate assistance to parents in carrying out their childcare responsibilities when needed. This includes the duty to support drug-dependant parents. A parent's use of drugs on its own does not justify the separation of a child from his or her parents, but child protection authorities must be particularly vigilant in such a situation.

54. The Pompidou Group's [Stavanger Declaration](#) recalled the right of children to be protected from the illicit use of narcotic drugs and psychoactive substances. However, according to several UN experts in a [joint letter](#) published ahead of the UNGASS 2016, "history and evidence have shown that the negative impact of repressive drug policies on children's health and their healthy development often outweighs the protective element behind such policies, and children who use drugs are criminalised, do not have access to harm reduction or adequate drug treatment, and are placed in compulsory drug rehabilitation centres." Also, children and young people would face greater detrimental effects stemming from law enforcement operations,

---

48. The [2018 World Drug Report](#) explained that "both drug use and incarceration carry stigma for men and women, but the degree of stigma is much greater for women because of gender-based stereotypes that hold women to different standards".

49. Countries in 2012 with the highest incarceration percentage of women for drug offences were Estonia, Georgia, Greece, Italy, Latvia, Portugal, Spain, Sweden. Russia incarcerated almost 20,000 women for drugs. HRI, Iakobishvili E., [Cause for Alarm: the Incarceration of Women for Drug Offences in Europe and central Asia, and the need for legislative and sentencing reform](#), 2012; [Report on the Revision of the European Prison Rules](#), 2006.

50. See the Court's judgment in *V.C. v. Italy* (No. 54227/14, 2018) where it found that the Italian authorities failed to protect a drug-dependent victim of a child prostitution ring. The Albanian National Plan for Drug Control 2019-2023 requires specific conditions for women detainees needing treatment for substance dependence. According to the [OHCHR's 2018 report](#), Spain indicated "that it was aiming to improve the integration of gender-specific aspects in all its prevention and assistance programmes, including the prevention and early detection of gender-related violence against women who were drug-dependent or at places where drugs were consumed".

51. See for example, the Committee of Ministers' [Recommendation Rec\(2009\)10](#) on Council of Europe Policy guidelines on integrated national strategies for the protection of children from violence.

a criminal record and/or detention, including in areas of employment, housing, education and welfare. At the [UNGASS 2016](#), States committed to “implement age-appropriate practical measures, tailored to the specific needs of children, (and) youth” to prevent drug use initiation and abuse and address their involvement in drug-related crime. Detention of young offenders must always be a matter of exception and the length of pre-trial detention should never be excessive.<sup>52</sup> Particular attention should be paid to the children’s right to informed consent, in a manner consistent with their evolving capacities, whenever they require medical treatment.

### **6.3. Other members of societies exposed to particular risks**

55. With respect to the prohibition of discrimination under Article 14 of the Convention, States should ensure that drug policies do not have unnecessary, undesirable or disproportionate impact on the delivery of health care and the provision of housing, education, employment to persons suffering from addiction and other drug disorders. States should have adequate mechanisms to monitor and address all forms of discrimination and stigma. Member States should ensure open and inclusive debates with the participation of affected populations.

56. The UN Working Group of Experts on People of African Descent found that certain minorities, in particular people of African descent, are disproportionately affected by excessively punitive drug policies and racial profiling. A 2019 civil society [report](#) highlighted for instance how the unequal enforcement of drug laws is a source of profound racial injustice in England and Wales. The report found that black people were stopped and searched for drugs at almost nine times the rate of white people, in 2016/17. An estimated 9% of white people reported using drugs in that period compared to 4.7% of black people. Asian people and those in the ‘mixed’ group were stop-searched for drugs at almost three times the rate of white people. Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons who use drugs are also disproportionately impacted by drug policies in many countries. Evidence shows that LGBTI persons who use drugs may not seek support or treatment from health-care providers because of previous or anticipated experiences of discrimination.<sup>53</sup>

57. Ireland, for example, has aimed in its [national strategy](#) on drug use to improve access to and the capacity of services for people with more complex needs, including among others Members of the Traveller community and other minority ethnic communities, LGBTI and migrant communities, sex workers and homeless people. Furthermore, the Strategy aims to foster engagement with representatives of these communities and/or services working with them as well as to “intervene early with at risk groups in criminal justice settings” by providing relevant training for staff and appropriate interventions.

## **7. Conclusions**

58. While old and emerging drug-related trends have put countries to the test, member States have increasingly found viable solutions by bringing human rights into drug policy development, implementation, monitoring and evaluation. What seemed to be existing in “parallel universes” might well be finding a meeting point.<sup>54</sup> There are many opportunities for sustainable drug policies, but it takes a proactive and holistic approach to counter societal problems related to drugs in a way that fully respects human rights. Political and infrastructural obstacles need to be identified and addressed to allow for the implementation of effective and human rights-compatible responses. Member States should make use of the existing tools to assess their policies’ implications on individuals and adequate indicators should be available to support governments and institutions collecting relevant evidence on drug-related policies.

59. This report and conclusions are summarised in the draft resolution and a preliminary draft recommendation to the Committee of Ministers, presented above.

---

52. The Committee on the Rights of the Child called to “ensure that criminal laws do not impede access to [treatment and harm reduction] services including by amending laws that criminalize children for possession or use of drugs”. See concluding observations: Ukraine, [CRC/C/UKR/CO/3-4](#), 2011.

53. See [UN Working Group of Experts on People of African Descent](#), 2016 Statement; op. cit. [A/HRC/39/39](#).

54. Paul Hunt, [Human rights, health and harm reduction – States’ amnesia and parallel universe](#), 2008.