Report to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on Accountability for Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

15 May 2021

Reporting organisations:

Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

HRI is an NGO in Special Consultative Status with ECOSOC.

Conectas is a leading human rights organization from the Global South. Our mission is to realize and enhance human rights and combat inequality to build a fair, free, and democratic society from a Global South perspective. In its more than 15 years of existence, Conectas has developed expertise in alliance-building, producing and sharing knowledge, and advocacy. Conectas' key activities include fostering a network of organizations from the Global South, gathering activists, and academics from the Global South to share their experiences and knowledge, and promoting a well-informed public debate on human rights. Since 2006, Conectas has held consultative status with the ECOSOC.

Contacts: Harm Reduction International | 61 Mansell Street, E1 8AN, London (UK) | giada.girelli@hri.global | www.hri.global

Introduction

Harm Reduction International (HRI) and Conectas Human Rights welcome the opportunity of contributing to the Special Rapporteur's report on accountability for torture and other cruel, inhuman, or degrading treatment or punishment (*hereinafter: torture and ill-treatment*). This submission focuses on **torture and ill-treatment committed in application of, or related to, drug control policies**.

Instances of torture and ill-treatment experienced by people who use or are suspected of using drugs or being involved in the drug market are many and diverse, as also denounced by this Rapporteur as well as other UN human rights mechanisms, and a full overview far exceeds the scope of this submission. The following are some examples of occurrences that are found to constitute torture or ill-treatment in the context of drug control:

- Corporal punishment for drug offences;[1]
- Detention on death row and execution for drug offences;[2]
- Compulsory drug detention and rehabilitation, in public as well as private facilities;[3]
- Lack, denial, removal or discontinuation of effective drug treatment, harm reduction, pain relief/palliative care and other healthcare services – including in detention settings, and sometimes as a means of forcing confessions;[4]
- Abuse of force, harassment, and physical, mental, and sexual violence by drug law enforcement, including in detention settings;[5]
- Forced confessions in drug-related cases;[6]
- Coerced sterilisation of women who use drugs;[7] and
- Abuses, discrimination and ill-treatment in healthcare settings.[8]

Impunity and broader lack of accountability for torture and ill-treatment committed in the context of drug policies is widespread,[9] with varying degrees and underlying causes in different countries, insomuch that a full assessment exceeds the space of the report. Therefore, the following answers are to be understood as starting points to guide a more in-depth analysis.

Q1. **Challenges to accountability**

While some of the abovementioned violations (such as violence by law enforcement) commonly violate both domestic and international law, in many other cases abuses (such as corporal punishment or denial

[1] See Harm Reduction International (2011), Inflicting Harm: Judicial corporal punishment for drug and alcohol offences in selected countries. https://www.hri.global/contents/1211. Updated information is available upon request.
[2] See A/67/279.
[3] Among others, see: Joint UN Statement: Compulsory drug detention and rehabilitation centres (2012). https://files.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf.; CAT/C/GMT/CO/7.
[4] Among others, see: CAT/C/GMT/CO/7;
[5] Among many others, see: A/HRC/44/22; HRI and CHALN (2019), Report to OHCHR on "human rights in the administration of justice, in particular on violence, death and serious injury in situations of deprivation of liberty", pursuant to Resolution 36/16. https://www.hri.global/files/2019/05/09/HRI_CHALN_-_Violence_in_detention_-_drug_policy.pdf; HRI and Release (2020), Submission to OHCHR on "Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers", pursuant to Human Rights Council Resolution 43/1. https://www.hri.global/files/2020/12/04/HRI_+_Release_-_Contribution_for_OHCHR_report_Res_43_1_People_of_African_Descent.pdf.
[6] Among others, see: A/HRC/39/39; CAT/C/RUS/CO/6.
[7] Among others, see: HRI and WHRIN (2020), Submission to the UN Working Group on discrimination against women and girls on "Women's and girls' sexual and reproductive health and rights in situations of crisis" (available upon request.
[8] Among others, see: Joint United Nations Statement on Ending Discrimination in Health Care Settings (2017), https://www.who.int/gender-equity-rights/knowledge/ending-discrimination-healthcare-settings.pdf; Ralf Jurgens et al. (2010), People who use drugs, HIV, and human rights, DOI:10.1016/S0140-6736(10)60830-6.
[9] Among many others, see A/HRC/44/22 on the human rights situation in the Philippines.

of harm reduction services) are enabled, prescribed, or even mandated by punitive drug laws which criminalise drug-related activities (against the recommendation of a plethora of UN mechanisms),[10] prescribe excessive forms of punishment, or fail to guarantee – when not prohibit – access to essential and evidence-based health services in the community and in detention settings. Punitive and discriminatory legal frameworks are therefore significant challenges to ensuring individual perpetrators as well as institutions are held responsible for torture and ill-treatment against people who engage in the drug market.
In addition, certain countries have failed to criminalise torture despite ratifying the Convention against Torture and Other Cruel, Inhumane, Degrading Treatment and Punishment, thus hampering accountability processes.[11]

Further, punitive drug laws and attitudes create an environment of stigma and discrimination against affected communities. This works against accountability in at least two ways: firstly, people who use or engage with drugs are systematically marginalised and disenfranchised, and often distrust police and the legal system – leading to underreporting of abuses; secondly, a stigmatising approach is in many circumstances endemic within detention settings, law enforcement agencies, and healthcare systems – leading to abusive practices which meet the threshold of ill-treatment, when not torture.[12] This, coupled with ongoing impunity and failure to adequately educate and train persons in position of authority, also represents a challenge.

Criminalisation, stigma, and discrimination also have the effect of disenfranchising or disempowering networks of people who use drugs and civil society denouncing abuses committed in the context of drug control – with a potentially chilling effect on reporting and calls for accountability. In extreme cases, victims as well as human rights defenders working on drug policy are prosecuted or otherwise harassed. For example, civil society in Brazil has reported how past drug convictions of victims of police violence and homicides are often used to summarily dismiss investigations.[13]

Another challenge is the historical separation between drug control and human rights; with the consequence that until recently – and to a degree still nowadays - drug policies escape a thorough human rights assessment, both domestically and internationally.[14] For example, many NHRIs and NPMs tend to focus on 'traditional' detention settings, while failing to, or being prevented from, adequately monitoring government's responsibilities regarding drug detention and rehabilitation centres (*hereinafter: CDDCs)*. In Brazil, the NPM was targeted by the government and defunded after denouncing ill-treatment in drug treatment centres.[15] This lack of oversight is even more apparent when it comes to private centres and to the state obligation to regulate and monitor such facilities. As a way of example, a 2008 review concluded that "of the approximately 100 NHRIs in the world, only a small

[10] For a compilation of UN sources recommending decriminalisation of drug use and possession for personal use, see: International Drug Policy Consortium (2018), Taking Stock: A Decade of Drug Policy, p. 49. http://fileserver.idpc.net/library/Shadow_Report_FINAL_ENGLISH.pdf. Also UN Chief Executive Board for Coordination (2019), United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration, https://unsceb.org/sites/default/files/2021-01/2018%20Nov%20-%20UN%20system%20common%20position%20on%20drug%20policy.pdf.
[11] Among others, Indonesia. See http://www.humanrights.asia/tortures/torture-in-indonesia/.
[12] Among others, see: UNAIDS (2019), Health, Rights and Drugs, https://www.unaids.org/en/resources/documents/2019/JC2954_UNAIDS_drugs_report_2019; HRI and Centre for Humane Policy (2019), Submission to the Committee on Economic, Social and Cultural Rights – 65th Session (18 February – 8 March 2019); Harm Reduction International (2020), Global State of Harm Reduction 2020, https://www.hri.global/files/2020/10/26/Global_State_HRI_2020_1_1_Global_Overview_FA_p16-17.pdf.
[13] UN News (2021), Brazil: UN rights office urges independent probe into deadly police operation in Rio de Janeiro, https://news.un.org/en/story/2021/05/1091482.
[14] Human Rights, Health and Harm Reduction: States' amnesia and parallel universes. An address by Professor Paul Hunt, UN Special Rapporteur on the right to the highest attainable standard of health (2008), https://www.hri.global/files/2010/06/16/HumanRightsHealthAndHarmReduction.pdf.
[15] Association for the Prevention of Torture (2021), Brazil: Concerns over defunded oversight body brought to UN Human Rights Council, https://www.apt.ch/en/news_on_prevention/brazil-concerns-over-defunded-oversight-body-brought-un-human-rights-council.

minority actively engage in ESC rights work, and fewer still in work relating to health rights."[16] Similarly at the international level, governments have met limited scrutiny for ill-treatment and torture experienced by people who use drugs or in application of drug control policies by the part of UN Special Procedures, human rights Treaty Bodies, and the Human Rights Council.[17] While some progress has been witnessed in recent years, there are ample opportunities for more in-depth monitoring.

Q2. Functions, forms and levels of accountability

A first distinction is between individual, institutional, and state accountability. The former is the answerability of the individual(s) who are materially and directly responsible for the torture and ill-treatment, and of those who aided, abetted, incited and/or enabled the violation. The second is the answerability of the institution(s) within which the abusive practice took place (for example law enforcement agencies or detention settings). The latter is the answerability of governments for laws and policies which prescribe or mandate the violation, or in whose context the torture or ill-treatment took place.
In the case of torture and ill-treatment in the context of drug policies (for example, violence in the context of drug law enforcement operations), institutional and state accountability are particularly important – as a mere focus on the responsibility of the individual often works to shield a broader analysis and reform of the institutional attitudes and practices, policies, and laws which enabled or even prescribed the violation – thus hindering accountability.

Accountability should be understood as not only punitive/reactive – as a process that identifies responsibilities for a violation that occurred, holds the perpetrator(s) accountable, and provides redress to the victim(s); but also as preventative. This means not merely working to deter future violations, but also introducing and implementing laws to protect against torture and ill-treatment, as well as reviewing and reforming laws, policies, practices which contributed to or enabled the violation. Again, this is essential in the case of torture or ill-treatment committed in the context of – or even prescribed – by drug law or policies; in such cases, a process that merely punishes the individual perpetrator without reforming abusive laws is by nature unfit to achieve justice and guarantee the non-repetition of the violation.

It descends from the above that accountability cannot merely be equated with prosecution and punishment. In fact, a reductionist understanding of accountability as merely individual prosecution prevents an adequate assessment of the responsibilities of institutions and governments as ultimate duty bearers; of the structural causes of certain instances of torture and ill-treatment - including how these stem from punitive and inherently violent approaches to drugs; and of how drug control disproportionately victimises certain communities. Rather, accountability is to be understood as a participatory process which identifies, acknowledges, and addresses the legal and institutional framework which enabled the violation, as well as its structural and environmental causes. In the specific context of drug policies, and in line with HRC Resolution 43/1, full redress must acknowledge the inherently racist and colonialist nature of drug control, and the connection between repressive drug policies and violence against racially targeted communities.[18]

[16] Alicia Ely Yamin (2008), Beyond compassion: The central role of accountability in applying a human rights framework to health, https://www.hhrjournal.org/2013/09/beyond-compassion-the-central-role-of-accountability-in-applying-a-human-rights-framework-to-health/.
[17] For a recent example, see the denounced failure of the Human Rights Council to seek accountability for human rights violations in the Philippines: HRi, IDPC, INPUD and NoBox Philippines (2020), Joint Statement: UN Fails to Respond to Human Rights Violations in the Philippines, https://www.hri.global/files/2020/10/07/PH_HRC45_-_Joint_Statement_-_def.pdf.
[18] See for examples from USA, Brazil, Australia and the UK: HRI and Release (2020), Submission to OHCHR on "Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers", pursuant to Human Rights Council Resolution 43/1. https://www.hri.global/files/2020/12/04/HRI_+_Release_-

Q3. Rights of victims

Understanding accountability holistically, and as a multi-layered process (see answer to Q2), it descends that:

- To be recognised as 'victims' should be: the person(s) who endured the torture or ill-treatment; and the secondary victims, who were negatively impacted by the violation (such as the family members of the victim and their communities) – including because of psychological suffering, trauma, or stigmatisation.

- Accountability processes and mechanisms should engage not only survivors but also their families and communities/representatives of the communities to which the victim belongs (in instances of torture and ill-treatment in the context of drug policies, the participation of networks of people who use drugs is essential), and civil society.

- Accountability processes should include prosecution of the individual perpetrator, acknowledgement of the torture/ill-treatment, reparation and rehabilitation of the victim(s), as well as undertaking of the necessary institutional reforms to guarantee non-repetition.

Q4. Recommendations

Because of the different forms of torture and ill-treatment discussed in this submission, this answer will not focus on specific mechanisms, but rather point to some of the elements that should be in place for pursuing accountability for torture and ill-treatment in the context of drug policies. Notably, for a mechanism, process or practice to be 'effective', it should be acceptable and accessible to the victim(s) and other stakeholders in the local context.

Broadly, accountability for torture and ill-treatment occurred in the context or in the implementation of drug policies requires several elements, all intertwined:

- A conducive legal framework which (a) clearly identifies cases that qualify as ill-treatment or torture in line with international law and standards, (b) protects from violations, and (c) envisages effective and adequately funded mechanisms for oversight and accountability. It is essential that domestic frameworks fully align with the definition of torture and ill-treatment developed by UN human rights mechanisms, including this Rapporteur; to this end, we also refer to the International Guidelines on Human Rights and Drug Policy[19] as an instrument that can provide useful guidance.

- An effective and accessible justice system. This includes an independent and functioning judiciary, accessible legal aid,[20] as well as accessible mechanisms for denouncing violations without fear of discrimination or repercussions.

- Effective instruments for monitoring and oversight of institutions and settings where people engaged with drugs are at risk of experiencing torture and ill-treatment (such as prisons and detention settings, CDDCs, private rehabilitation centres, healthcare settings). These should include well-funded, trained, and independent monitoring mechanisms. Practice shows that in too many cases National Human Rights Institutions and National Preventive Mechanisms are

_Contribution_for_OHCHR_report_Res_43_1_People_of_African_Descent.pdf; Kojo Koram (2019), The War on Drugs and the Global Colour Line.

[19] International Centre on Human Rights and Drug Policy, UNDP, UNAIDS, WHO, OHCHR (2019), International Guidelines on Human Rights and Drug Policy, https://www.humanrights-drugpolicy.org.

[20] Among others, see: Natalia Antolak-Saper et al. (2020), Drug Offences and the Death Penalty in Malaysia: Fair Trial Rights and Ramifications, https://www.hri.global/files/2020/05/29/Malaysia_Death_Penalty_-_Fair_Trial_-_Monash_ADPAN.pdf;

either non-existent, not independent, under-resourced, and/or paying limited to settings (such as CDDCs or hospitals) identified throughout this submission.

- A free and empowered civil society able to denounce violations, advocate for individual and institutional accountability, and participate in accountability and reform processes; the meaningful involvement of affected communities in the design, implementation and monitoring of accountability mechanisms is of particular importance.

- Transparency by the part of institutions and governments. In too many cases, particularly with regards to instances of 'institutionalised' ill-treatment and torture (such as corporal punishment, CDDCs, and death row populations) government fail to provide updated and disaggregated data which are essential in identify instances of abuses and call for accountability.

- Redress and guarantees of non-repetition can only be achieved through the reform of laws, policies, institutions, and attitudes which are ultimately responsible for torture and ill-treatment. This requires an holistic process which identifies and acknowledges such laws and policies, analyses structural determinants, meaningfully engages disproportionately affected communities, and integrate mechanisms to provide redress to such communities;[21]

- Education and training of subjects who are in contact with people who use drugs and in a position of authority (such as law enforcement personnel and healthcare professionals) to prevent instances of ill-treatment and torture, sensitize, and facilitate the identification of signs of torture and ill-treatment.

[21] As an example: Toni Smith-Thompson (2021), How Legalizing Cannabis Makes the Case for Reparations, https://www.nyclu.org/en/news/how-legalizing-cannabis-makes-case-reparations.