

**Input to
Annotated Outline: General Comment on the Impact of Drug Policies
on Economic, Social and Cultural Rights**

31 January 2024

Submitting Organisation



Harm Reduction International (HRI) is a leading NGO that envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reforms. We show how rights-based, evidence-informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense. HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.¹

General Input

1. The General Comment presents a unique opportunity for CESCR not only to clarify and build upon its interpretation of the Convention regarding this specific topic, but also to consolidate and rationalise existing standards on drug policy and economic, social and cultural rights developed by others in the UN ecosystem. It should aim to provide authoritative, non-politicised guidance to Member States in their work at the national and international level.
2. Linked to this, the future/forward-looking element is particularly important, especially due to the many experiences of drug policy reforms happening around the globe. Member States need guidance on how to ensure these new policies refrain from violating human rights and contribute to fulfilling economic, social and cultural rights.
3. A key guiding consideration is the acknowledgment that drug policies, if well designed, can promote ESCRs; and not only of people who use and engage with drugs, but of communities and societies in general.
4. To some extent, the General Comment can be used to debunk non-evidence-based assumptions around drugs and drug policy which too often inform policies, and to make sure that measures taken are *“addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law and the Universal Declaration of Human Rights”*².

Structure of the General Comment

5. The proposed structure seems adequate to explore issues related to the impact of the drug policies on economic, social and cultural rights. Some suggestions on the title of sections are highlighted under the relevant sections below.

¹ www.hri.global

² United Nations General Assembly, Thirtieth Special Session, ‘Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem’, 2016, page 2. Available here: https://www.unodc.org/res/un-common-position-drugs/index_html/UNGASS2016-E.pdf

Content/Substance

A. Section II: General Obligations of States Parties under the Covenant

6. Economic, social and cultural rights are still commonly misunderstood as aspirational and non-justiciable rights. Hence, the first thing that the General Comment need to tackle is to debunk such misunderstanding.
7. As stated on General Comment No. 3, “*while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect*”, and states should take measures towards full realisation among other, measures to provide judicial remedies for violation of rights.³
8. The General Comment can further clarify States’ obligations in deploying its maximum available resources for the realisation of economic, social and cultural rights relevant to drug policy, and make emphasis that availability of resources “*does not alter the immediacy of the obligation, nor can resource constraints alone justify inaction.*”⁴ Among other aspects to assess in relation to allocating maximum available resources is that spending/expenditures must be efficient and effective to the fulfilment of economic, social and cultural rights.⁵ States should divest from activities/programmes that undermines and violates human rights, health and development, as highlighted by HRI’s latest research, Aid for War on Drugs.⁶
9. In that context, the General Comment should also provide an authoritative explanation on how minimum core obligations of individual economic, social and cultural rights looks like in the context of drug policy.⁷

Participation, consultation, and transparency

10. As also highlighted by the OHCHR’s report on human rights challenges in addressing and countering all aspects of the world drug problem,⁸ meaningful engagement of civil society,

³ United Nations Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3: The nature of States Parties’ obligations’, 1990, para. 1. Available here: <https://www.refworld.org/pdfid/4538838e10.pdf>

⁴ United Nations Committee on Economic, Social and Cultural Rights, ‘An evaluation of the obligation to take steps to the ‘maximum available resources’ under an optional protocol to the covenant’ (E/C.12/2007/1), 2007, para. 4. Available here: <https://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf>.

⁵ See among others: <https://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf>, https://docs.escr-net.org/usr_doc/marreport.pdf#:~:text=Article%20.1%20of%20the%20International%20Covenant%20on%20Economic%2C,means%2C%20including%20particularly%20the%20adoption%20of%20legislative%20measures.%E2%80%9D

⁶ Harm Reduction International, ‘Aid for War on Drugs’, 2023. Available here: https://hri.global/wp-content/uploads/2023/09/HRI_Aid-for-the-War-on-Drugs_Final-1.pdf

⁷ UN CESCR, General Comment No. 3, para. 10.

⁸ Report of the Office of the United Nations High Commissioner for Human Rights, ‘Human rights challenges in addressing and countering all aspects of the world drug problem’ (A/HRC/54/53), 2023. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/156/03/PDF/G2315603.pdf?OpenElement>

people who use drugs, affected communities and youth in the design, implementation, and evaluation of drug policy is imperative for its success. This is particularly relevant for the case of people deprived of liberty, who due to their condition of incarceration, have more limited opportunities to engage in public affairs and voice their problems.

11. As part of securing and guaranteeing participation, the General Comment should emphasise the need for safety and security of these communities when/for taking part in the design, implementation and evaluation of national, regional and international drug policies. Without decriminalising drug use and possession for personal use, and without addressing stigma and discrimination, it remains almost impossible for these communities to engage meaningfully – and it is particularly challenging precisely in those contexts where such participation is the most needed.⁹
12. Participation and meaningful engagement of civil society, people who use drugs, affected communities and youth is greatly important for, among others, data collection that in turn leads to evidence-based and, thus, effective policies. The lack of complete and disaggregated data remains a big challenge in providing a holistic picture of the implementation of drug policies (and its impacts).¹⁰
13. Additionally, it should emphasise that a “*transparent and participative decision-making processes*” are important elements of government efforts in taking reasonable steps to achieve the realisation of the economic, social and cultural rights.¹¹
14. Lastly, the General Comment could centre communities (people who use drugs, people with living experiences) more, vis-a-vis civil society. It could be useful to spell the difference among these stakeholders and reiterate the importance of both.

Non-discrimination, equality, and groups or persons requiring particular attention

15. In addition to groups who are already identified as disproportionately affected by punitive drug policies, the General Comment could also pause on the unique impact such policies have on the ESC rights of children, for example, when parents or breadwinners are arrested for drug use or small possession.¹²
16. Another group that requires particular attention is people who use drugs living in places of economic, political or humanitarian crisis in which access to harm reduction and other health services is under immense pressure or at risk.¹³

⁹ Canadian HIV/AIDS Legal Network, International HIV/AIDS Alliance, Open Society Institute, “‘Nothing about us without us’ Greater, meaningful involvement of people who use illegal drugs: A public health, ethical, and human rights imperative International edition”, 2008. Available here: <https://www.opensocietyfoundations.org/uploads/b99c406f-5e45-4474-9343-365e548daade/nothing-about-us-without-us-report-20080501.pdf>

¹⁰ HRI and Release have addressed this issue on, among others, the following submissions: https://hri.global/wp-content/uploads/2022/10/HRI_Release_-_Contribution_for_OHCHR_report_Res_43_1_People_of_African_Descent-1.pdf, and <https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/cfi-res-47-21/submissions/2022-09-14/Harm-Reduction-International-and-Release-Submission-NGO-PAD-hrc51-A-HRC-51-53.pdf>

¹¹ UN CESCR, E/C.12/2007/1, para. 11.

¹² See, for example, Damon Barrett, ‘The Children of the Drug War’. This book investigates the impacts of the war on drugs on children, young people and their families by looking at four themes: 1) production and trade; 2) race, class and law enforcement; 3) families and drug policy; 4) drug use and dependence. https://research.gold.ac.uk/id/eprint/20779/1/Children_of_the_Drug_War.pdf

¹³ For more information see HRI 2022. The Global State of Harm Reduction 2022. page 25

17. Additionally, the General Comment should pay special attention to people in prison and other closed settings¹⁴, who, due to conditions of incarceration, are at higher risk of contracting infectious diseases and whose access to economic, social and cultural rights, including access to health and harm reduction services is extremely limited or insufficient.¹⁵
18. As for women, particular attention should also be given to pregnant women who use drugs, which in many situations are stigmatised, discriminated against, and their needs neglected,¹⁶ and on the disproportionate impact of criminalisation and incarceration on women.
19. Equally important is to make sure to pause more on compounding discrimination/intersectionality, and on the magnifying role drug policies play in further stigmatising and marginalising the already-oppressed group, such as women, indigenous people, black and brown people, migrants (including in the context of climate change), refugees and people living in places of economic, political and humanitarian crisis.
20. In general, the General Comment should emphasise that lack of resources cannot justify even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes.

Respect, protect, fulfil

21. Although controversial, acknowledging drug use as part of bodily autonomy will lay an important ground for the General Comment.¹⁷ Of course, such decision should be preceded by adequate information about drugs and its consequences, which then leads to states obligation to provide evidence-based, non-stigmatising information about drugs.¹⁸
22. A key topic for the General Comment to delve into is the provision of quality, accessible and affordable holistic/comprehensive harm reduction services as part of countries obligation to fulfil the right to health. The General Comment could provide details about what ‘availability’, ‘acceptability’, ‘accessibility’ and ‘quality’ mean in practice and in the specific context of marginalised groups of people that requires special attention (e.g. by clarifying that specific consideration must be paid to specific groups, such as people in prison and other closed settings, women, black and brown individuals). Harm Reduction International’s Global State of Harm Reduction: 2023 Update to Key Data showed that only 109 countries include explicit

¹⁴ HRI uses the terminology of ‘prison and other closed settings’ to refer to all places of deprivation of liberty in all forms, either public or private, including but not limited to places where people are deprived of their liberty as either part of criminal investigation, administrative decision, other reasons, legally or arbitrarily, such as compulsory drug detention centres, mental health institutions, and migration centres.

¹⁵ HRI and other organisations have addressed these issues in, among other, the following submissions: [2023 Joint Submission to the OHCHR on access to medicines in prisons](#), [2023 Joint submission to the Special Rapporteur on Health on Harm Reduction in Prisons](#), and [2023 Joint Submission to the OHCHR on Harm Reduction and Prisons](#)

¹⁶ See, among others, National Harm Reduction Coalition, ‘Pregnancy and Substance Use’, available here: <https://harmreduction.org/issues/pregnancy-and-substance-use-a-harm-reduction-toolkit/>

¹⁷ The right to the highest attainable standard of health contains two aspects, one of which is ‘freedom’ to control one’s health and body. UN CESCR, ‘General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)’ (E/C.12/2000/4), 2000, para. 8. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/439/34/PDF/G0043934.pdf?OpenElement>

¹⁸ UN CESCR, General Comment No. 14, para. 12.

supportive reference to harm reduction in national policy documents.¹⁹ Even in countries where harm reduction programmes are implemented, availability, accessibility and quality remain significant issues. Services are unevenly distributed in most countries, with resources usually concentrated in capital cities.²⁰

23. Particularly relevant is to clarify States' obligations to provide tailored harm reduction and health care services for people who use drugs in prison and other closed settings in a way that guarantees its acceptability while protecting the privacy and dignity of people deprived of liberty. Equally relevant is to address issues of discrimination and marginalisation upon release and State's obligation to guarantee continuation of care.

Permitted Limitations

24. The annotated outline has touched upon an important aspect to be included on this section, which is authoritative guidance on determining whether a certain limitation falls within the permissible ground. Further, it should also be noted that such limitation should be necessary, proportionate, and respect the minimum core obligation, and in alignment with the Siracusa Principles.²¹ Equally important is the provision of legal avenue to counter argue the decision to apply certain limitations.²²

B. Section III: Drug policy and ESC rights - substantive sections/Specific obligations of States parties under the Covenant

25. In general, it is important to reiterate the pervasive impact of punitive and ineffective drug policies on virtually every right in the Covenant. On the previous two consultations at the 2023 CND 66th Session and 2023 International Harm Reduction Conference (both available as annexes), community and civil society representatives have highlighted how drug policy impacted every rights.

Determining the scope of drug control applicability (scheduling substances)

26. On this, it is important to highlight that no substance is inherently, exclusively "bad", and that there is a vast range of evidence-based interventions (such as drug checking, safer smoking kits, and others) that can be effective to reduce the harms associated with a substance. Scheduling certain substances as 'off-limit', either for use, production, and/or research, is not

¹⁹ Harm Reduction International, 'Global State of Harm Reduction: 2023 Update to Key Data', 2023. Available here: <https://hri.global/publications/global-state-of-harm-reduction-2023-update-to-key-data/>

²⁰ Harm Reduction International, 'Global State of Harm Reduction 2022', 2022, page 24. Available here: https://hri.global/wp-content/uploads/2022/11/HRI_GSHR-2022_Full-Report_Final.pdf

²¹ United Nations Commission on Human Rights, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (E/CN.4/1985/4), 1984. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G84/182/73/PDF/G8418273.pdf?OpenElement>. See also Amrei Muller, Limitations to and Derogations from Economic, Social and Cultural Rights, Human Rights Law Review 9:4(2009), page 557-601. Available here: http://hr.law.vnu.edu.vn/sites/default/files/resources/derogations_fo_escr.pdf

²² UN Commission on Human Rights, The Siracusa Principles, para. 8.

effective to prevent neither its use nor its associated harms and it is not proportionate when available evidence-based and less restrictive responses.

Health, social and other services for people who use controlled substances

27. For a more holistic approach to this section, it is suggested to use 'economic, social and cultural rights' rather than 'health, social and other services'. The current title may give the wrong impression that people who use drugs are entitled only to 'services' rather than 'rights'.
28. In addition to what is already included in this section on the annotated outline, it is important to reiterate how *"the right to health is not to be understood as a right to be healthy."*²³ The right to health contains freedom to control one's health and body. This bodily autonomy aspect of the right to health is crucial in addressing the issue of drug use.
29. Secondly, harm reduction needs to be understood as a comprehensive approach that aims at minimising negative health, social, and legal impacts associated with drug use, policies and laws. It looks at drug use from a non-judgemental, non-stigmatising perspective- which is key to the provision of harm reduction services. Consequently, harm reduction is not to be equated merely with services, but rather understood expansively – as housing, education, access to social security, access to reproductive healthcare, access to justice and legal aid for people who use drugs, not just for when they are arresting for drug offences, but also for other legal-related issues that they encounter due to their drug use, such as discrimination at workplace or to access education); and more.

Health and other ESC impacts of administrative and criminal sanctions related to controlled substances

30. Unless it has been addressed in other sections, the General Comment should also explore the impact of administrative and criminal sanction on the economic, social and cultural rights of people who use drugs and their families, such as how the absence of the breadwinner could result in poorer health and socioeconomic conditions of the family, stigma and discrimination faced by family members of people who use drugs, and others, which in extreme cases may further expose them to engagement in the drug market.

International cooperation and assistance

31. The General Comment should pause on Member States' obligations to promote economic, social and cultural rights through international assistance and cooperation and to not contribute to their violation, including in the context of a) development aid, and b) multilateral institutions, including the UN (but also entities such as the Global Fund). This is a particularly important topic due to how much domestic drug policies are shaped by international funding as well as international policies. On this, the GC could also clarify applicable standards related to transparency, extraterritorial obligations, and civil society and community participation in multilateral fora.
32. Specifically, the General Comment should reaffirm that it is possible for drug policies and laws to contribute to healthier, safer societies, so long as cooperation, assistance, and resources

²³ UN CESCR, General Comment No. 14, para. 7.

allocation is shifted by divesting from unjust punitive drug responses – that have been proven to violate human rights, including economic, social and cultural rights, with no tangible result/‘success’ to address world drug problem – and investing in harm reduction and other approaches that prioritise community, health and social justice.²⁴ In line with that, the General Comment could also make recommendations that encourage transparency and funding for rights-based response to drugs.

C. Section IV: Implementation

Measuring the impact/effectiveness of drug policies

33. It is suggested to use ‘Evaluation of Drug Policies’ or similar wordings rather than ‘Implementation’ as it better reflects the section.
34. In addition to recommendation to collect and disseminate appropriate and disaggregated data- by at least sex, race, ethnicity, rural/urban and socio-economic status²⁵-, the General Comment should also recommend for such processes to be done periodically and with meaningful participation of people who use drugs, civil society and other relevant actors.
35. Indicators of successful drug policies should be able *“to identify disparities in the enjoyment of human rights among different population groups and to draw parallels between legal or policy reforms and the realization of a particular right”*.²⁶ Violation of economic, social and cultural rights as the impact of drug policies should not be regarded as ‘unintended consequences’ but should be a benchmark in evaluating the success of such policies.

D. Section V: The future of drug control

36. The General Comment is an invaluable opportunity for the Committee to provide authoritative guidance on ‘emerging issues’ such as drug control and environmental justice/climate change (and in this context protection, respect and fulfilment of economic, social and cultural rights in regulated markets; including the issues of ESCRs protection and promotion vis-a-vis for profit markets, reparations for previously criminalised communities, etc. This should be a priority issue due to the many reforms which are ongoing or will happen in the near future and also in line with OHCHR’s report recommendations.
37. As abovementioned, this section should re-emphasise the ability that drug policies have to improve of economic, social and cultural rights of people who use drugs and society in general. Failure to do so will be a missed opportunity - not only to consolidate and harmonise standards, but to provide guidance on emerging and evolving issues.

²⁴ HRI, Aid for War on Drugs, page 4.

²⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, 2006, para. 66. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/114/69/PDF/G0611469.pdf?OpenElement>.

²⁶ United Nations Office of the High Commissioner for Human Rights, ‘Manual on Human Rights Monitoring; Chapter 20: Monitoring Economic, Social and Cultural Rights’, 2011, page 9. Available here: <https://www.ohchr.org/sites/default/files/Documents/Publications/Chapter20-48pp.pdf>.