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INCB 141st session
Consultation with Member States:
The human rights dimension of the drug control conventions

8 November 2024

Right to health, including availability and prevention, treatment and rehabilitation

Excellencies, ladies and gentlemen,

As I am sure you have all experienced, in many discussions held internationally the right to health and how it relates to the various international agreements, treaties and conventions is many times controversial. The aim of our conversation today is to bring the different elements together and to allow for a productive discussion on the right to health, including availability, and prevention, treatment and rehabilitation.

In the three international drug control conventions, the preambles indicate the primary interest of the international community to protect the health and welfare of humankind by making indispensable internationally controlled substances available for medical, scientific and industrial purposes, while ensuring that there is no diversion and or misuse.

Monitoring of the production, trade and consumption of internationally controlled substances to ensure their proper use for these purposes should not be in opposition to ensuring the respect of human rights. These objectives need to be pursued together.

The need to have access to essential drugs is also prominent in other international legal instruments[1] under the concept of the Right to Health that is comprised in the notion of article 25 of the Universal Declaration of Human Rights, adopted by the UNGA in 1948:

"*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services ...*".[2]

An earlier formulation of the right to health as a fundamental part of human rights was first articulated in the 1948 Constitution of the World Health Organization

1 Christopher Hallam, The International Drug Control Regime and Access to Controlled Medicines, Series on Legislative Reform of Drug Policies No.26, December 2016, Transnational Institute and International Drug Policy Consortium.
2 Universal Declaration of Human Rights, Art. 25, http://www.un.org/en/documents/udhr/index.shtml#a25.

(WHO), whose preamble defines health as "*a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity*". This definition was a game changer in the predominant thinking at the time. It further states that "*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition*."[3]

Additionally, the Right to Health was recognized as a Human Right in the 1966 International Covenant on Economic, Social and Cultural Rights.

In addition to these, a series of legal and normative instruments were also adopted in World Health Assemblies.

The Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for the 10th session of the Human Rights Council indicates that "*the de facto denial of access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment*." Further it adds that "(…) *Given that lack of access to pain treatment and opioid analgesics for patients in need might amount to cruel, inhuman and degrading treatment, all measures should be taken to ensure full access and to overcome current regulatory, educational and attitudinal obstacles to ensure full access to palliative care*."[4]

It must be highlighted that the Board has, since its establishment, promoted national and international measures to strive towards adequate availability of and access to internationally controlled drugs for medical purposes.

In the understanding that the full enjoyment of the right to health, implies in access to essential medicines, WHO has published every two years the Essential Medicines List, which is widely used by countries to address priority health-care needs of the population. The list contains several narcotic drugs and psychotropic substances under international control.

In a recent report by WHO – Left Behind in Pain, we see that despite morphine being an effective and relatively low-cost medicine for relieving strong pain, the disparity in access across countries is stark. There is a 5- to 63-fold difference in the estimated median consumption of morphine between high-income countries and lower income countries.

This data echoes that of the 2018 Lancet Commission which described the lack of access to pain relief medication as 'one of the most heinous, hidden inequities in global health' with the richest 10% of countries possessing 90% of distributed morphine-equivalent opioids.

Despite the legal and normative instruments described above, availability of controlled substances globally continues to be imbalanced. Over the past 20 years, INCB data has shown that the consumption of opioids has more than tripled globally with, in particular, an exponential increase in the use of fentanyl being observed. Over-

3 http://www.ohchr.org/Documents/Publications/Factsheet31.pdf
4 A/HRC/10/44 14 January 2009 Human Rights Council, seventh session Agenda item 3 Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak.

prescription of fentanyl and other strong opioids is at the root of the opioid overdose epidemic that is still affecting some countries, mostly in North America.

INCB has issued special supplements on availability. It must be highlighted that the Board has, since its establishment, promoted national and international measures to strive towards adequate availability of and access to internationally controlled drugs for medical purposes and in its 2022 special supplement, it confirms the same persistent disparities between regions.

Almost all such consumption is concentrated in Europe and North America. At the same time, consumption levels in other regions are often not sufficient to meet the medical needs of the populations. These regional imbalances are not due to a shortage of opiate raw materials.

Theses analyses confirm the inequities and underline the need for decisive action particularly in low- and middle-income countries. A major problem in these countries is the limited access to affordable opioid analgesics, such as morphine, as outlined both in WHO and INCB´s reports.

These imbalances indicate that authorities are not accurately estimating the needs for these medicines. Similar imbalances are also found in the consumption of psychotropic substances for the treatment of various mental health and neurological conditions. While 80 per cent of people with epilepsy live in low- and middle-income countries, the consumption of psychotropic substances used in the treatment of epilepsy is concentrated in high-income countries.

The right to health in the context of the goals of the drug control conventions applies also to ensuring the availability of psychotropic substances for the treatment of mental health conditions, including of substance use disorders up to the provision of methadone and buprenorphine in the context of opioid agonist therapy services. In relation to treatment of substance use disorders, countries need to ensure that treatment services are also respectful of the rights of the people affected. Treatment should be voluntary and free of any form of coercion.

Treatment should be available also for people in penal institutions as people who are deprived of their liberty because of a punishable offence cannot deprived of other human rights, including the right to health. In reality, we know that treatment services in penal settings are very often non-existent or - if they exist at all - are not always science-based.

Protecting the right to health applies also to services for preventing associated health and social consequences of drug use such as HIV/AIDS, Hepatitis C, tuberculosis and overdose.

Protecting the health of our communities from the health consequences of drug trafficking, the violence associated with it and drug use should start very early. It should start by providing prevention programmes for families, schools, and communities to ensure that children and youth, especially the most marginalized and poor, grow and stay healthy and safe into adulthood and old age.

Even though there are no specific treaty-based measures concerning prevention and treatment, other than taking all practicable measures, over the years governments have emphasized its importance in addressing the world drug problem.

The UNGASS 2016 outcome document has a set of operational recommendations devoted to demand reduction and related measures.

Finally, States parties must make full use of international legal instruments (including article 33 of the Convention on the Rights of the Child) to protect children from drug use and ensure that national and international drug control strategies are in the best interests of the child.

The Board also encourages Governments to respect all human rights norms in designing drug-related strategies and policies, to make full use of the available international legal framework in order to protect children from the illicit use of narcotic drugs and psychotropic substances, to prevent the use of children in the illicit production and trafficking of such substances, and to ensure that national and international drug control strategies and policies take into consideration the principle of the best interests of the child.

As a last point, we would like to reiterate that drug control actions in the area of ensuring availability of controlled substances for medical and scientific purposes and for prevention, treatment, rehabilitation and recovery must be consistent with relevant international human rights standards and norms in the context of each element of a comprehensive, integrated and balanced approach to addressing the world drug problem.

Thank you.