

**Annotated outline:**

**General Comment on the impacts of drug policies on economic, social and cultural rights**

This General Comment addresses a topic - drug policy and control - already subject to several international conventions and numerous national and regional regulations. The impact of these laws and regulations on the economic, social, and cultural rights of people who use drugs, Indigenous Peoples, and those who cultivate, grow and distribute controlled substances, and their families and communities, has been addressed in many of the Committee's concluding observations. This General Comment provides an opportunity to consolidate its stated positions and to build on this work.

The complexity of the topic, and the perceived and real ambiguity of State obligations in this area, compel the need for clarity on 5 issues in particular:

- Determining the scope of drug control applicability (scheduling);
- Alternatives to criminalization (addressing the manifest racial and class-based discrimination in the enforcement of drug laws);
- Sequencing of crop eradication (allowing for compensation and respect for the right to an adequate standard of living and the right to work);
- A move away from the patient vs. criminal dichotomy (acknowledging the rights to bodily autonomy, and freedom from forced treatment); and
- The future/evolution of drug policy.

This annotated outline is meant to offer components for further discussion, for the Committee to determine what States parties need to do fulfill their obligations under the Covenant in relation to this complex issue.

**I. Introduction to the General Comment**

Drug policy refers to the complicated web of legislation, regulations, and enforcement that determine the development, marketing, distribution, and use of controlled substances, including both prescription medicines and substances with no currently recognized therapeutic value. It is important to note that drug policy is not static, as evidence of the harms or benefits of substances and drug control interventions has evolved over time.

Internationally, drug control is governed by three multilateral treaties that impose a dual obligation to ensure adequate availability of controlled substances for medical and scientific use, while preventing their non-medical use, out of the stated concern for the "health and welfare of mankind."<sup>1</sup> The conventions, together with international human rights treaties and other relevant international instruments, are the framework for domestic drug laws. The International Narcotics Control Board, the World Health Organization, and the UN Commission on Narcotic Drugs also are responsible for making and implementing drug policy at the international level.<sup>2</sup>

At the national level, a range of legal instruments (e.g., statutes, regulations) and institutions (courts, legislations, agencies) create, implement, and interpret drug control laws and policies. Government entities with mandates over drug control are diverse, and include, for example, ministries of health, development, justice, foreign affairs, law enforcement, and social welfare, whose work intersects (among other areas) with those dealing with women, children, Indigenous Peoples, and other marginalized groups.

The drug control system impacts, directs, and controls a number of areas of public and private life relevant to economic, social and cultural rights:

1. Determining the scope of drug control applicability
2. Health, social and other services for people who use controlled substances
3. Cultivation, production, distribution, and use of controlled substances
4. Administrative and criminal sanctions related to controlled substance
5. Obligations of international cooperation and assistance

Drug policies and practices have direct and indirect implications for a number of rights enshrined in the Covenant, as the Committee already has recognized. These include the right to health,<sup>3</sup> the rights to work and to just and favorable conditions of work,<sup>4</sup> the right to social security,<sup>5</sup> the right to family life,<sup>6</sup> the right to an adequate standard of living,<sup>7</sup> the rights to adequate food,<sup>8</sup> water, and housing,<sup>9</sup> and the rights to take part in cultural life<sup>10</sup> and to enjoy the benefits of scientific progress and its applications.<sup>11</sup>

The purpose of this General Comment should be to clarify States' obligations relating to the impact of drug policy on the enjoyment of rights enshrined in the Covenant in order to provide a framework for implementation of the Covenant as a whole with regard to drug laws, policies, and practices.

## II. **General obligations of States parties under the Covenant**

This section will review the general obligations of States parties under the Covenant, including with respect to progressive realization, maximum available resources, non-discrimination and equality, proscriptions against retrogression, to respect, protect, and fulfill rights enshrined in the Covenant, participation, consultation, and transparency, and permitted limitations on rights.

These obligations are laid out in other General Comments, in some cases in separate sections and otherwise integrated into the document.

For the purposes of consultation, the elements of participation, non-discrimination, and the intersectionality and interdependence of rights will be particularly helpful to highlight. The General Comment should also seek to concretize what respect, protect, and fulfill means in the

context of drug policies, and what a reasonable attention to availability, accessibility, acceptability and quality might be.

#### Participation, consultation, transparency

This section should discuss States parties' obligations to ensure meaningful participation of civil society, including people who use drugs, palliative care patient advocates, and their respective organizations, and Indigenous Peoples and peasants in the design, implementation, and assessment of drug laws, policies, and practices that affect them, including with respect to drug-treatment and drug-related health services. International human rights and drug control mechanisms have affirmed many of these obligations, and also have highlighted the importance of ensuring the participation of women who use drugs or living in crop-cultivating areas and Indigenous people in this context.<sup>12</sup>

The Committee might make a particularly helpful contribution in framing the current status and scope of the right to consultation and participation, drawing on the following: a) The CEDAW Committee's has recommendation that adequate funding be provided to civil society organizations providing treatment and support services to women who use drugs;<sup>13</sup> b) attention to Indigenous Peoples' right to be consulted and to free, prior, and informed consent regarding drug control measures; c) engaging the rights of peasants and rural people to be consulted regarding drug control measures.

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

The Committee could make a particular contribution in highlighting not only those who are disproportionately negatively affected by drug laws because of lack of access to resources generally, because of their traditional relationship with drugs, or because of their drug use or drug dependence (e.g. women, children, people of African descent, Indigenous peoples and peasants, people who use drugs) but also in drawing attention to States parties obligations in reviewing their drug policies for inherent biases (e.g. harsher punishments attached to drugs predominantly used by people who are already marginalized).

#### Respect, protect, fulfill

This section will address how drug control interventions are relevant to obligations to respect, protect and fulfill economic, social and cultural rights.

The following elements are examples the Committee might find it helpful to include as pointers to States parties on what the obligations to respect, protect, and fulfill means in the context of drug policy. The Committee may wish to highlight other examples or elements.

#### *The obligation to respect*

Drug control interventions frequently interfere with or limit multiple human rights, directly or indirectly, thus raising questions about the obligation to respect. For example, States have a duty to protect the right to enjoy cultural life and the right to health; but the drug conventions' ban

on traditional uses of coca chewing as a cultural practice and on coca cultivation infringes Indigenous Peoples' traditional, medicinal, and religious practices. In some countries, people who use drugs must register as drug users as a requirement of state-sponsored treatment; but women who use drugs risk losing custody of their children, both impeding their access to treatment and their and their children's right to family life.

#### *The obligation to protect*

Drug control interventions also frequently give rise to inadequacies in States parties' obligation to protect human rights such as the right to health, the right to work, and the right to enjoy the benefits of scientific progress. For example, drug courts typically compel people who use drugs to choose between forced treatment and criminal punishment, violating their rights to health and bodily autonomy.<sup>14</sup> These violations intersect with substantive discrimination where people are unable to secure medical prescriptions for scheduled essential medicines (such as methadone or buprenorphine for opioid substitution treatment) due to cost, health insurance barriers or other barriers to accessibility.

#### *The obligation to fulfill*

Drug policies often erect barriers to effective health care, including palliative care, especially where such care is linked to the needs of particularly vulnerable populations. Existing international law states clearly that States parties must take positive action to meet the needs to all individuals, without discrimination, including those who are dependent on drugs.

#### Permitted limitations

This section should give States parties clear guidance for how to evaluate their drug policies against Covenant obligations. In some cases, there are real clashes with international drug conventions. The Committee should not shy away from highlighting such clashes, but rather help States parties overcome them.

Drug policy interventions frequently interfere with people's enjoyment of their ESC rights. For example:

- Fumigation of illicit drug crops exposes Indigenous Peoples and peasants who cultivate these crops, their families, and communities in which they live to toxic chemicals, polluting water, poisoning animals, and eliminating legal and illegal crops, jeopardizing rights to health, work, and an adequate standard of living.
- Criminalization of drug use results in the incarceration of millions of people worldwide, subjecting them to dangerous, unhealthy environments, where access to health services, food, and water is severely limited, threatening their rights to health.
- Overly restrictive laws and regulations create significant barriers for cancer patients to access morphine, an essential medicine, interfering with the right to health.

While the Covenant allows for certain restrictions to be placed on the enjoyment of ESC rights in certain situations, a large body of literature has shown that drug policy interventions frequently do not meet specific criteria for permissible restrictions on these rights because they do not pursue a legitimate goal, are not effective, are not based in law, or have a disproportionately grave impact on these rights.

This section should clarify how the test should be used to determine whether specific drug policy interventions that affect ESC rights are permissible or not.

### **III. Drug policy and ESC rights - substantive sections/Specific obligations of States parties under the Covenant**

This section would examine the impact of different types of drug control interventions on ESC rights and consider the relevant norms from the Covenant and what they mandate.

This section will seek to answer the following questions:

- What are the common drug control/human rights interventions in this area?
- What are the human rights impacts?
- What ICESCR norms are relevant and what do they mandate?

This could also be framed as specific obligations of States parties under the Covenant.

#### Determining the scope of drug control applicability (scheduling substances)

Determining what substances are scheduled as controlled substances internationally and nationally is a key function of the international and national drug policy systems. Through this function, the international community and Member States determine what substances fall under the rules of UN drug conventions and national drug laws and regulations. Scheduling decisions have profound consequences for the cultivation, production, distribution and use of the affected substances and thus for people and communities who interact with these substances, whether as farmers who grow them, as users for medical or recreational purposes, or the exercise of cultural or traditional practices. Such decisions may result in the substance becoming illegal and people who grow or use them becoming subject to administrative, criminal and other sanctions. Scheduling decisions thus affect a number of ESC rights, including the rights to health, to benefit from scientific progress, to take part in cultural life.

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

This section would be an opportunity to consolidate the substantial recommendations by this Committee and other UN human rights mechanisms regarding States parties' obligations to ensure gender and culturally sensitive harm reduction interventions (including drug treatment on voluntary basis, and with free and informed consent), including in prison, and tailored for the specific needs of young people who use drugs, and on decriminalization of drug use and

possession for personal use to meet their obligations under the rights to health and the right to benefit from scientific progress and its applications.<sup>15</sup> It would also be an opportunity to provide guidance regarding efforts to move away from criminalized treatment of people who use drugs to a health-based approach (to treat people who use drugs as ‘patients’ in need of treatment, and not criminals), which, while welcome in principle, have been used to justify compulsory detention to control people who use drugs and to coerce people who would otherwise go to prison into court-supervised treatment for people who use drugs.<sup>16</sup>

#### Cultivation, production, distribution, of controlled substances

This section would discuss State obligations with respect to illicit crop cultivation by Indigenous Peoples, peasant farmers, and people living in communities where illicit crops are cultivated, engaging in particular rights related to health, to take part in cultural life, to work, and to an adequate standard of living. It will also discuss State obligations with respect to people engaged at low levels of the drug trade in urban and rural areas. This will provide an opportunity for the Committee to provide input regarding “urban alternative development,” an effort promoted by UN entities and Member States, but that to date has little substance.<sup>17</sup>

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

This section would discuss the excessive use of incarceration and other punitive approaches as a drug control measure and its negative effect on a wide range of ESC rights, with disproportionate impacts on people living in poverty and other marginalized individuals and communities, including people of African descent, Indigenous Peoples, women, and children. It would provide an opportunity for the Committee to delve further into issues the Committee and other human rights mechanisms have addressed with respect to these issues, and develop its work on establishing sanctions for petty drug offenses, considering their root causes (poverty, racism, lack of viable alternatives) as well as their impact on ESC rights. It would also allow the Committee to consider the impact of police violence and militarization on health and ESC rights.

Enforcement efforts targeting people who use drugs and petty dealers and poor, Indigenous, and racialized communities and legislation denying bail as well as sentence reduction, suspension, early release, parole, pardons and amnesty contribute for all drug crimes, including drug use to disproportionately high rates of poor and other marginalized people in prison, affecting their rights to health, and their families’ economic security, and thus right to an adequate standard of living.

Once a person has a conviction for a drug-related offence, they may face considerable obstacles in obtaining employment and may lose access to government benefits, such as basic income assistance, student loans, public housing, and food assistance, affecting their rights to health, work, and an adequate standard of living. Registration as a drug user (a condition of State-provided treatment in some countries) or drug testing as a condition of social security, employment, or other public benefits, infringes on these rights, as well as the right to health.

Violence among criminal drug networks, between police or military forces, and communities caught in the crossfire affect mental and physical health, causing displacement, and in some cases, reducing life expectancy.<sup>18</sup> Under prohibition, governments have prioritized law enforcement at the expense of health, with the vast majority of resources going to the former.

#### International cooperation and assistance

UN human rights mechanisms, UN entities, Member States, and civil society organizations have highlighted concerns about international cooperation efforts contributing either directly or indirectly to human rights violations, cautioning, for example, that donor countries not condition development assistance on illicit crop cultivation efforts, and that States ensure that peasant farmer households have adopted viable, sustainable livelihoods before eradication efforts take place.<sup>19</sup> Concerns also have been raised about the disproportionate share of assistance going to law enforcement, including militarized interventions, with scant resources for harm reduction, essential medicines, and other health and social services for people who use drugs or who need them for pain relief.

The Committee could make an important contribution here by providing guidance to donor States about incorporating ESC rights standards for the provision of financial assistance, international judicial and law enforcement cooperation, and demand reduction efforts and related projects, as well as direction on increasing resources for efforts to promote health and sustainable livelihoods for vulnerable populations.

#### **IV. Implementation**

The section is meant to help States parties understand that part of their obligation is to evaluate the success of drug policies using matrices that account for human rights, and to be transparent about these. The Committee could make an important contribution here by noting the obligations of States parties to involve affected populations – including people who use drugs – in the evaluation of drug policies and their effects.

#### Measuring the impact/effectiveness of drug policies

States parties have an obligation to evaluate the substantive ability of individuals to access, exercise, and enjoy the rights enumerated in the Covenant, without discrimination of any kind. Current measures of success of drug policy efforts, such as kilos of drugs seized, hectares of crops eradicated, number of arrests and prosecutions, largely focus on outputs or activities, not on their impact on a person's substantive ability to exercise their rights. This hinders the States' capacity to assess whether drug policies are helping them progressively realize the rights contained in the Covenant or conversely contributing to a prohibited retrogression of rights.

The Committee might wish to elaborate specific obligations in this regard, for example recommending that States:

- Collect and disseminate appropriate information to enable the formulation and implementation of human rights-compliant drug control laws and policies, including remedies for abuses.
- Disaggregate data by relevant factors, including health status (such as drug dependence), age, sex, race and ethnicity, sexual orientation and prioritize outcome-oriented metrics that measure positive and negative economic, social, cultural, and environmental impacts of these policies.
- Consider how the Sustainable Development Goals indicator framework can serve as a model for drug policy indicators, as drug policy impacts many Sustainable Development Goals, including regarding poverty, food security, health, gender equality, water and sanitation, and decent work.<sup>20</sup>

## V. The future of drug control

The Committee might consider ending with a pragmatic evaluation of the lack of success of prohibition as the main component of drug policy worldwide. It has manifestly not worked. While we cannot know for sure how other policies would work in the aggregate, evidence suggests that they would at the very least be more, not less, rights-respecting. The Committee could end by offering its expertise in constructive dialogues with States parties on what this means for this area of work.

The Committee might note that 60 years of prohibition has not led to the desired results, as drugs are used more and are more accessible now than perhaps ever before, and as this General Comment illustrates, has directly or indirectly caused serious harm. The Committee might also note that given the wealth of evidence that the current approach does not work, it is urgent to develop new approaches, pointing to some best practices. It is also worth noting that while the drug conventions are almost universally accepted, they were developed by North American and European countries with very limited input from low- and middle-income countries, and no input from communities most negatively affected by them. In addition, it is worth noting that the harmful impacts of prohibition have disproportionately fallen on low- and middle-income countries, with the war on drugs fought primarily in the global south, even though demand for drug has emanated mostly from the global north.

The Committee could discuss why a human rights-based approach requires States to re-examine the impacts of prohibition on ESC rights, and offer its expertise to States parties on what this means for this area of work.

---

<sup>1</sup> This general obligation is set out in the 1961 Single Convention on Narcotic Drugs, requiring States parties to take necessary legislative and administrative measures “to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.” Article 4(c). The treaties are the Single Convention on Narcotic Drugs (as amended by the 1972 Protocol) 520 UNTS 7515 (1961); the Convention on Psychotropic Substances, 1019 UNTS 14956 (1971); and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1582 UNTS 95 (1988).  
<sup>2</sup> For an overview of the UN drug control system, see Lines, R. (2017). *Drug Control and Human Rights in International Law*. Cambridge: Cambridge University Press.



---

<sup>3</sup> See, e.g., E/C.12/AZE/CO/4; E/C.12/BEN/CO/3; E/C.12/BGR/CO/6; E/C.12/KHM/CO/2; E/C.12/CAN/CO/6; E/C.12/MDA/CO/3; E/C.12/NOR/CO/6; E/C.12/PHL/CO/5-6; E/C.12/RUS/CO/6; E/C.12/SEN/CO/3; E/C.12/UKR/CO/7.

<sup>4</sup> E/C.12/BLR/CO/4-6.

<sup>5</sup> C.12/AUS/CO/5.

<sup>6</sup> E/C.12/EST/CO/3.

<sup>7</sup> E/C.12/COL/CO/6; E/C.12/ZAF/CO/1; E/C.12/UZB/CO/3.

<sup>8</sup> E/C.12/COL/CO/5.

<sup>9</sup> E/C.12/MUS/CO/4.

<sup>10</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 21: Right of Everyone to Take Part in Cultural Life, UN Doc. E/C.12/GC/21 (2009); see also UNESCO, 'Lists of Intangible Cultural Heritage and the Register of Good Safeguarding Practices', 2018, <https://ich.unesco.org/en/lists>; UNESCO, Convention for the Safeguarding of the Intangible Cultural Heritage (2003);

<sup>11</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 25: Science and Economic, Social and Cultural Rights, UN Doc. E/C.12/GC/25 (2020); E/C.12/MUS/CO/4.

<sup>12</sup> CRC/C/COL/CO/3; CEDAW/C/MDA/CO/6; CEDAW/C/MMR/CO/3; CEDAW/C/LAO/CO/7; A/HRC/47/40; A/RES/S-30/1; United Nations System Chief Executives Board for Coordination, Summary of Deliberations, UN Doc. CEB/2018/2 (2019), annex 1; Sustainable Development Goal 16.7.

<sup>13</sup> CEDAW/C/MDA/CO/6.

<sup>14</sup> A/HRC/47/40; DSD Program, Drug Courts in the Americas, New York: Social Science Research Council, March 2018.

<sup>15</sup> See, e.g., E/C.12/MDA/CO/3; E/C.12/LTU/CO/3; E/C.12/NOR/CO/6; E/C.12/PHL/CO/5-6; E/C.12/RUS/CO/6; E/C.12/SRB/CO/3; E/C.12/BLR/CO/7; E/C.12/KAZ/CO/2; E/C.12/POL/CO/6; E/C.12/SWE/CO/6; E/C.12/BLR/CO/4-6; E/C.12/IDN/CO/1; E/C.12/LTU/CO/2; E/C.12/RUS/CO/5; CEDAW/C/RUS/CO/8; E/C.12/UKR/CO/6; E/C.12/UZB/CO/2. See also CERD/C/CAN/CO/21-23 (2017); CEDAW/C/CAN/CO/8-9; Committee on the Rights of the Child, General Comment No. 21: Children in Street Situations, UN Doc. CR/GC/21 (2017); Committee on the Rights of the Child, General Comment No. 15: The Right of the Child to the Highest Attainable Standard of Health, UN Doc. CRC/C/GC/15 (2013); Committee on the Rights of the Child, General Comment No. 3: HIV/AIDS and the Rights of the Child, UN Doc. CRC/GC/2003/3 (2003); Committee on the Rights of the Child, General Comment No. 20: Implementation of the Rights of the Child during Adolescence, UN Doc. CRC/C/GC/20 (2016); United Nations System Chief Executives Board for Coordination, Summary of Deliberations, UN Doc. CEB/2018/2 (2019), annex 1

<sup>16</sup> DSD Program, Drug Courts in the Americas, New York: Social Science Research Council, March 2018.

<sup>17</sup> See, e.g. Diskul, MLD, et al. 2021. Drugs and Development in the Urban Setting—Expanding Development-Oriented Interventions Beyond Illicit Drug Crop Cultivation. *Journal of Illicit Economies and Development*, 2(2), pp. 80–90.

<sup>18</sup> UNODC, 'Making drug control fit for purpose: Building on the UNGASS decade. Report by the Executive Director of the United Nations Office on Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly', UNODC, Vienna 2008; Ernesto Zedillo, Catalina Pérez-Correa, Alejandro Madrazo, and Fernanda Alonso, Drug Policy in Mexico: The Cause of a National Tragedy—A Radical but Indispensable Proposal to Fix It, 41 U. Pa. J. Int'l L. 107 (2019).

<sup>19</sup> Results Attained by Member States in Achieving the Goals and Targets Set at the Twentieth Special Session of the General Assembly, the Limitations and Problems Encountered and the Way Forward: International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, Note by the Secretariat, UN Doc. UNODC/CND/2008/WG.3/2 (2008); UN Office on Drugs and Crime, Alternative Development: A Global Thematic Evaluation, Final Synthesis Report (2005); World Bank, Afghanistan: State Building, Sustaining Growth, and Reducing Poverty (2005); Council of the European Union, Horizontal Working Party on Drugs, The EU Approach on Alternative Development, 9597/06 (2006).

<sup>20</sup> International Expert Group on Drug Policy Metrics. (2018). *Aligning Agendas: Drugs, Sustainable Development, and the Drive for Policy Coherence*