January 29, 2024

Contribution to CESCR General Comment on Drug Policy

Submission of the International Association for Hospice and Palliative Care

The International Association for Hospice and Palliative Care (IAHPC) is pleased to make the following submission for the proposed General Comment on human rights and drug policy.

As global and regional organizations active in the field of palliative care, our submission discusses governments' obligations to 1) respect protect and fulfil the rights of people with clinical needs to access to medicines containing controlled substances -- our focus is on essential opioid analgesics for pain management and palliative care -- while 2) protecting society from the harms of non-medical use of those same substances. Those member state obligations are mutually reinforcing under the right to the highest attainable standard of physical and mental health.

I. Introduction

Internationally controlled essential medicines (ICEMs) are those included both in the schedules of the three international drug control conventions *and* in the World Health Organization Model List of Essential Medicines (for adults and children). ICEMs are the cornerstone of palliative care practice. The International Narcotics Control Board (INCB) estimates that more than 80% of the world's people live in countries where access to ICEMs is low to inadequate. (1) Adequate availability of, and affordable access to these medicines supports the rights to life and personal security, to medical care, to the highest attainable standard of physical and mental health, and to participation in political, social, family, economic and civic life, among others.

The medicines morphine, fentanyl, hydromorphone, oxycodone, and methadone are included in the WHO Model List of Essential Medicines for the treatment of moderate to severe pain and dyspnea in advanced disease. They are also listed, or 'scheduled', for extra regulatory control under the international drug control conventions. These conventions mandate governments to promulgate regulatory controls to prevent harmful non-medical use that many regulatory bodies have translated into unduly restrictive national policies and social attitudes that prevent rational opioid availability for medical purposes and result in preventable suffering that violates, *inter alia*, the right to the highest attainable standard of physical and mental health.

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The legitimate medical demand for ICEMs is essentially *inelastic and in fact growing*, in the sense that rights holders in severe pain or in need of treatment for substance use disorder or alleviation of other symptoms such as terminal breathlessness, have no consumable alternative. This inelastic and growing demand for ICEMs means that unduly restrictive regulations for legitimate medical use of controlled substances configure the illicit, or parallel, markets for those same substances, driving consumers, patients, family members of patients and health professionals to access the unregulated market to find the the medicines they need. Parallel markets can be dangerous, carry the risk of criminal sanctions for those who access them, and are often the source of counterfeit or dangerous substances that lack the requisite therapeutic value. In this, states parties are failing to fulfil the right to protect.

Palliative care (PC) is the active holistic care of individuals across all ages with serious health-related suffering (SHS) due to severe illness, including those near the end of life. It aims to improve the quality of life of patients, their families and their caregivers. (2) The World Health Organization estimates that only 14% of people in the world with palliative care needs, mostly in upper income countries, receive it. (3) ICEMs are a cornerstone of clinical medicine, which aims to attend to the severe pain and symptoms that accompany severe and terminal illness (not restricted to cancer.)

The IAHPC is a non-governmental organization in consultative status with the United Nations Economic and Social Council (ECOSOC) and a non-state actor in official relations with the World Health Organisation.

II. Background: global unavailability and serious health related suffering

Experts estimate that SHS, and thus the need for PC will increase in all regions of the world, with the largest proportional rise in low-income countries (155% increase between 2016 and 2060). By 2060, an estimated 48 million people (47% of all deaths globally) will die experiencing SHS, which represents an 87% increase from 26 million people in 2016. 83% of these deaths will occur in low-income and middle-income countries. Globally, SHS will increase most rapidly among older persons (aged 70 years and above --183% increase between 2016 and 2060). In absolute terms, it will be driven by rises in cancer deaths (16 million people, 109% increase between 2016 and 2060). The condition with the highest proportional increase in SHS will be dementia (6 million people, 264% increase between 2016 and 2060). (4)

These estimates are evidence that states parties to the drug control conventions are failing to respect, protect, and fulfil (1) the right to the highest attainable standard of physical and mental health and (2) to be free from cruel and neglectful treatment.

According to the INCB, more than **80%** of the world population, more than 5.5 billion people, mainly in low- and lower middle-income countries, has no access to internationally controlled essential medicines to

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address SHS associated with severe pain, palliative care needs, treatment of substance use disorder, and other conditions. Morphine, particularly oral morphine, is the gold standard of pain management according to WHO, and is unavailable to 75 per cent of the global population. The INCB also reports that lack of training of the health workforce, unduly restrictive regulations, and "fear of addiction" are the main impediments to opioid availability.

Paragraph 34 of General Comment 14 states that "In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventive, curative *and palliative health* services;" (emphasis added). Routine availability of ICEMs is a cornerstone of palliative medicine as a health service.

The Lancet Commission on Palliative Care and Pain Relief, which studied the health economics of the global abyss in access to internationally controlled essential medicines such as morphine, calculated that improving access to medical morphine would cost the global community around USD145 million per year, a fraction of the USD100 billion the world spends every year on drug control.

III. Human Rights Standards

The obligation to provide essential medicines is a core minimum obligation of the right to health, which means that such access should be prioritised. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has consistently linked access to medicines with the principles of equality and non-discrimination, transparency, participation, and accountability. ICMEs are not excluded from this interpretation of human rights principles relating to access to medicines generally. They should be available in appropriate formulations (including for children), with appropriate safeguards and prescribed by properly trained health workers, for people with palliative care needs throughout the health system, including in humanitarian emergencies.

The obligation of states to respect, protect, and fulfill the right to health includes an obligation to ensure consistent, safe, access to pain medicines and palliative care. (5) The United Nations Committee on Economic, Social and Cultural Rights has identified providing essential medicines, as defined by the WHO, as a core obligation under the right to health. (6) The WHO has included morphine in its Model List of Essential Medicines, a list of the medications that should be available to all persons (adults and children) who need them, since it was first established in 1977. (7) The right to be free from torture, cruel, inhuman,

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or degrading treatment or punishment also creates a positive obligation for states to protect persons in their jurisdiction from unnecessary pain related to a health condition.(8)

In 2008, the U.N. Special Rapporteur on The Right to the Highest Attainable Standard of Health and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment jointly recognized that a failure to address barriers to palliative care and pain treatment can be a violation of human rights:

> The failure to ensure access to controlled medicines for the relief of pain and suffering threatens fundamental rights to health and to protection against cruel, inhuman and degrading treatment. International human rights law requires that governments must provide essential medicines—which include, among others, opioid analgesics—as part of their minimum core obligations under the right to health. (9)

Since 2008, an increasing body of statements supports the right to pain treatment and palliative care including for women and children, in statements by the Committee on Economic, Social and Cultural Rights (CESCR) (10) the Committee on the Elimination of Discrimination against Women (CEDAW), (11) and the Committee on the Rights of the Child (CRC). (12)

Article 24, CRC, General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health**:** States have an obligation to make all essential medicines on the World Health Organization Model Lists of Essential Medicines, including the list for children (in paediatric formulations where possible) available, accessible and affordable.

Article 19 of the Inter-American Convention on the Rights of Older Persons, stipulates that state Parties should "[e]nsure that medicines recognized as essential by the World Health Organization, including controlled medicines needed for palliative care, are available and accessible for older persons." (13)

Article 2, Resolution 48/3 (Human Rights of Older Persons) approved by the Human Rights Council in 2021, "*Calls upon* all States to […]promote and ensure the full realization of all human rights and fundamental freedoms for older persons in, inter alia, […] the provision of […] long-term support and palliative care services." Consistent availability of controlled medicines is key to provision of palliative care services.

References

(1) International Narcotics Control Board Supplement 2022 https://www.incb.org/documents/Publications/AnnualReports/AR2022/Supplement/E_INCB_2022_1_Supp_1_eng.pdf

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(2) IAHPC definition of palliative care 2018 https://hospicecare.com/what-we-do/projects/consensus-based-definition-of-palliative-care/definition/
(3) World Health Organization Fact Sheet https://www.who.int/health-topics/palliative-care
(4) Sleeman, K. E., De Brito, M., Etkind, S., Nkhoma, K., Guo, P., Higginson, I. J., ... & Harding, R. (2019). The escalating global burden of serious health-related suffering: projections to 2060 by world regions, age groups, and health conditions. *The Lancet Global Health*, *7*(7), e883-e892. https://www.sciencedirect.com/science/article/pii/S2214109X1930172X
(5) International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993; Convention on the Rights of the Child, adopted Nov. 20, 1989, G.A. Res. 44/25, Annex, 44 U.N. GAOR, Supp. No. 49, U.N. Doc. A/44/49, at 167 (Sept. 2, 1990); Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR, Supp. No. 46, U.N. Doc. A/34/46, at 193 (Sept. 3, 1981); International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex, U.N. GAOR, 61st Sess., Supp. No. 49, U.N. Doc. A/61/49, at 65, entered into force May 3, 2008.
(6) UN Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 43, https://www.refworld.org/pdfid/4538838d0.pdf
(7) WHO, "WHO Model List of Essential Medicines: 22nd list," September 2021, https://www.who.int/groups/expert-committee-on-selection-and-use-of-essential-medicines/essential-medicines-lists
(8) Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 7; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, art. 16.
(9) United Nations Special Rapporteur on the Prevention of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment & Special Rapporteur on Right of Everyone to the Highest Attainable Standard of Physical and Mental Health, "Letter to Chairperson of the Commission on Narcotic Drugs," U.N. Doc. G/SO 214 (52-21) (Dec. 10, 2008), p. 4,http://www.hrw.org/sites/default/files/related_material/12.10.2008%20Letter%20to%20CND%20fromSpecial%20Rapporteurs.pdf.
10. UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, December 16, 2010, para. 45, http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW- C-2010-47-GC1.pdf
11. UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/GC/27, December 16, 2010, para. 45, http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW- C-2010-47-GC1.pdf

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12. UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, April 17, 2013, para. 25, https://www.refworld.org/docid/51ef9e134.html
13. Inter-American Convention on Protecting the Human Rights of Older Persons http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-70_human_rights_older_persons.pdf