Building Consensus

A Reference Guide to Human Rights and Drug Policy

Prepared by
International Harm Reduction Association and Human Rights Watch

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Contents

INCB Annual Report 2007
ECOSOC Resolution
WHO/INCB Joint Report 2007
WHO Framework
CND Annual Report 2006
WHO Briefing note 2008
World Health Assembly Resolution 58.22, 2005

3. Obligation to Ensure Access to Controlled Medicines under the Drug Conventions

Single Convention on Narcotic Drugs 1961
INCB Special Report 1995
WHO essential medicines

4. Obligation to Ensure Access to Controlled Medicines and the Rights to the Highest Attainable Standard of Health and to Be Free from Torture and Cruel, Inhuman and Degrading Treatment or Punishment

ICESCR
WHO Constitution
Universal Declaration of Human Rights
Convention on the Rights of the Child
Committee on ESC Rights General Comment and Concluding Observations
Special Rapporteurs on torture and health – Letter to the chair of CND
Special Rapporteur on torture – Report for the 10th session of the HRC

C. Law Enforcement and Flexibility of the Drug Conventions

1. Latitude and Flexibility of the Drug Conventions

Drug Conventions
Commentary of the 1988 Convention
INCB Annual Report 2001

2. Penalties and Sanctions for Drug-Related Offences

(a) Non-Custodial Measures and Depenalization

Convention on the Rights of the Child
Committee on the Rights of the Child – GC No. 10
General Assembly – The Tokyo Rules

(b) Proportionality of Penalties and Sanctions

INCB Annual Reports
The Beijing Rules
Special Rapporteur on torture – Report for the 10th session of the HRC

(c) Treatment of Prisoners

UN Standard Minimum Rules for the Treatment of Prisoners
Special Rapporteur on torture – Report for the 10th session of the HRC
ECHR

D. Ensuring protection against torture in law enforcement measures - Extradition and the Principle of Non-Refoulement

Special Rapporteurs on torture and health – Letter to the chair of CND
Convention against Torture

ICCPR
UN Human Rights Committee, GA No. 20
Convention Relating to the Status of Refugees
Inter-American Convention to Prevent and Punish Torture
ECHR
European Convention on Extradition
UN Model Treaty on Extradition adopted by the General Assembly

E. Crop Eradication and Alternative Development

1988 Drug Convention
UNGASS Special Session on the World Drug Problem (1998)
Declaration on the Rights of Indigenous Peoples
UNODC – A Global Thematic Evaluation
Open-Ended Intergovernmental Expert Working Group
ECOSOC Resolution 2008/26
UN Committee on the Rights of the Child – Concluding Observations
Special Rapporteur on the Right to Health – Oral Remarks

A. Harm Reduction

1. United Nations Legal and Policy Statements on Harm Reduction

(a) UN endorsement of harm reduction measures

A harm reduction approach – including the provision of needle and syringe exchange programmes and opioid substitution therapy – is endorsed and promoted by the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organisation (WHO) in numerous best practice guidelines and policy documents. UNAIDS, WHO and the United Nations Office on Drugs and Crime and the INCB include both opioid substitution therapy and needle and syringe programmes within their Comprehensive Package of Interventions for HIV prevention, treatment and care for people who inject drugs.

General Assembly	The UN General Assembly has endorsed harm reduction as an essential HIV prevention measure in its Declaration of Commitment on AIDS in 2001 and in the Political Declaration on AIDS in 2006. GA Res 60/262, Political Declaration on HIV/AIDS, A/RES/60/262 (2006) Para. 22: "Reaffirm that the prevention of HIV infection must be the mainstay of national, regional and international responses to the pandemic, and therefore commit ourselves to intensifying efforts to ensure that a wide range of prevention programmes that take account of local circumstances, ethics and cultural values is available in all countries, particularly the most affected countries, including (…) expanded access to essential commodities, including male and female condoms and sterile injecting equipment; harm-reduction efforts related to drug use; (…)" GA Special Session on AIDS Res S-26/2, adopting the Declaration of Commitment on HIV/AIDS (2001) A/RES/S-26/2 Para. 52: "By 2005, ensure: that a wide range of prevention programmes which take account of local circumstances, ethics and cultural values, is available in all countries, particularly the most affected countries, including (…) expanded access to essential commodities, including male and female condoms and sterile injecting equipment; harm-reduction efforts related to drug use; (…)" Declaration on the Guiding Principles of Drug Demand Reduction, adopted by the UN General Assembly Special Session (UNGASS) in Resolution S-20/4, Measures to enhance international cooperation to counter the world drug problem (1998) A/RES/S-20/4, http://www.un.org/ga/20special/demand.htm. Para. 8: "The following principles shall guide the formulation of the demand reduction component of national and international drug control strategies, in accordance with the principles of

	the Charter of the United Nations and international law, in particular, respect for the sovereignty and territorial integrity of States; human rights and fundamental freedoms and the principles of the Universal Declaration of Human Rights; and the principle of shared responsibility: (…) (b) Demand reduction policies shall: (i) Aim at preventing the use of drugs and at reducing the adverse consequences of drug abuse; (…)" Para. 10: "Demand reduction programmes should cover all areas of prevention, from discouraging initial use to reducing the negative health and social consequences of drug abuse. They should embrace information, education, public awareness, early intervention, counselling, treatment, rehabilitation, relapse prevention, aftercare and social reintegration. Early help and access to services should be offered to those in need."
CND (support for General Assembly declarations which refer to harm reduction)	The Commission on Narcotic Drugs has endorsed the Declaration of Commitment and the Political Declaration on HIV/AIDS (and thereby indirectly the harm reduction words contained in them): 2008: CND Resolution 51/14 Promoting coordination and alignment of decisions between the Commission on Narcotic Drugs and the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND-2008-Session51/CND-51-Res-2008-14e.pdf 2006: CND Resolution 49/4 Responding to the prevalence of HIV/AIDS and other blood-borne diseases among drug users http://www.unodc.org/pdf/resolutions/cnd_2006_49-4.pdf
UN System position paper	Preventing the Transmission of HIV Among Drug Abusers. A position paper of the United Nations System. Annex to the Report of 8th Session of ACC Subcommittee on Drug Control 28-29 September (2000) http://www.hivpolicy.org/Library/HPP000074.pdf "The aim of this paper is to present a United Nations (UN) system wide position on policy and strategies to prevent the transmission of HIV among drug abusers. Deciding on the implementation of the intervention strategies to prevent HIV in injecting drug abusers is one of the most urgent questions facing policy makers. Studies have demonstrated that HIV transmission among injecting drug abusers can be prevented and that the epidemic already has been slowed and even reversed in some cases. HIV prevention activities which have shown impact on HIV prevalence and risk behaviour include AIDS education, access to condoms and clean injecting equipment, counselling and drug abuse treatment"
UNAIDS	Letter from the Executive Director of UNAIDS Michel Sidibé to the Chairperson of the 52nd

	Session of the Commission on Narcotic Drugs Ms. Selma Ashipala-Musavyi, http://www.hrw.org/en/news/2009/02/12/letter-executive-director-unaids-chair-cnd "In considering its review of progress, the Commission may wish in particular to note the parallel commitments made by the General Assembly in its twenty-sixth special session in 2001 concerning HIV/AIDS. The Declaration of Commitment adopted by that special session referred specifically to "harm-reduction efforts related to drug use" as elements of a wide range prevention programme to reduce the spread of HIV/AIDS. This view was repeated in the 2006 Political Declaration on HIV/AIDS. It has been highly appreciated that the Commission has reaffirmed both these resolutions in its resolution 51/14 and thereby recognized explicitly the inextricable link between the issues of harms associated with drug use and efforts to combat AIDS." "In assisting member states to fulfil the commitments made by the General Assembly in relation to harm reduction, UNAIDS, including our Cosponsors and in particular UNODC and WHO, have amassed a considerable body of strong and consistent evidence on the effectiveness of harm reduction approaches. Conversely, there is no convincing evidence of major negative consequences of such interventions (…). In other words, harm reduction provides an excellent return on public investment." Resolution 14.2 of the 23rd Meeting of the UNAIDS Programme Coordinating Board, 15-17 December 2008, http://data.unaids.org/pub/InformationNote/2008/20081208_pcb_23_decisions_en.pdf Para. 14.2: "Mindful of Commission on Narcotic Drugs resolution 51/14, which calls for collaboration among Member States represented both in the Commission and on the Programme Coordinating Board towards the promotion of better coordination and alignment of the AIDS response in order to scale up towards the goal of universal access to comprehensive prevention, care, treatment and support services for people who use drugs; *takes note* of the upcoming UNGASS review of the World Drug Problem and *requests* UNODC, as one of the UNAIDS Cosponsors, to work towards an outcome of the meeting that accurately reflects the importance of decreasing HIV transmission and co-infection in people who use drugs." Practical Guidelines for Intensifying HIV Prevention: Towards Universal Access (UNAIDS 2007), http://data.unaids.org/pub/Manual/2007/jc1274-towardsuniversalaccess_en.pdf. p. 46: "Table 2.2 Injecting drug users Why? (…) Harm reduction measures such as access to sterile injection equipment; drug dependence treatment such as methadone and buprenorphine; community-based outreach; and providing HIV prevention information are among the most effective and cost-effective measures to prevent, the epidemic among injecting drug users. (…)" "How? (…) Promote adequate coverage of the full range of harm reduction measures – particularly sterile syringe and needle access and drug substitution treatment. (…)"

	Intensifying HIV prevention, UNAIDS policy position paper. Programme Coordinating Board, Seventeenth meeting, Geneva, Switzerland, 27-29 June 2005, http://data.unaids.org/publications/irc-pub06/jc1165-intensif_hiv-newstyle_en.pdf P. 34: "3. Preventing transmission of HIV through injecting drug use- by developing a comprehensive, integrated and effective system of measures that consists of the full range of treatment options, (notably drug substitution treatment) and the implementation of harm reduction measures (through, among others, peer outreach to injecting drug users, and sterile needle and syringe programmes), voluntary confidential HIV counselling and testing, prevention of sexual transmission of HIV among drug users (including condoms and prevention and treatment for sexually transmitted infections), access to primary healthcare, and access to antiretroviral therapy. Such an approach must be based on promoting, protecting and respecting the human rights of drug users"
Office of the High Commissioner for Human Rights	Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS – International Guidelines on HIV and Human Rights, Consolidated Version 2006 http://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf Guideline 4, para 21(d): "Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider: the authorization or legalization and promotion of needle and syringe exchange programmes; the repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes."
Joint WHO/UNODC/UNAIDS position papers	WHO, UNAIDS & UNODC (2004) Policy Brief: Provision of sterile injecting equipment to reduce HIV transmission. Geneva, World Health Organization, 2004 http://www.who.int/hiv/pub/advocacy/en/provisionofsterileen.pdf Background: "The provision of access to sterile injection equipment for injecting drug users and the encouragement of its use are essential components of HIV/AIDS programmes, and should be seen as a part of overall comprehensive strategies to reduce the demand for illicit drugs. (…)" WHO, UNAIDS & UNODC (2004) Position Paper - Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention. Geneva, World Health Organization 2004 http://www.who.int/substance_abuse/publications/en/PositionPaper_English.pdf "Substitution maintenance therapy is one of the most effective treatment options for opioid dependence. It can decrease the high cost of opioid dependence to individuals, their families and society at large by reducing heroin use, associated deaths, HIV risk behaviours and criminal activity. Substitution maintenance therapy is a critical component of community-based approaches in the management of opioid dependence and the prevention of HIV infection among injecting drug users (IDUs)."

	WHO, UNAIDS & UNODC (2004) Policy Brief: Reduction of HIV Transmission in Prisons, Geneva, World Health Organization, 2004 http://www.who.int/hiv/pub/advocacy/en/transmissionprisonen.pdf
UNODC	UNODC (2008) Reducing the adverse health and social effects of drug use: A comprehensive approach, http://www.unodc.org/documents/prevention/Reducing-adverse-consequences-drug-abuse.pdf Preface: "'Harm reduction' is often made an unnecessarily controversial issue as if there was a contradiction between prevention and treatment on one hand and reducing the adverse health and social consequences of drug use on the other. This is a false dichotomy. They are complementary." Recommended interventions in the UNODC discussion paper include: "b. low-threshold pharmacological interventions (example opioid-agonists and antagonist drugs), not directly related to drug-free oriented programmes, but to immediate health protection, have to be easily accessible;" "f. needle/syringe exchange programmes (...);"
INCB	INCB Annual Report for 1993, http://www.incb.org/pdf/e/ar/incb_report_1993_1.pdf Para. 29: "The Board acknowledges the importance of certain aspects of "harm reduction" as a tertiary prevention strategy for demand reduction purposes. (…)" INCB Annual Report for 2000, http://www.incb.org/incb/en/annual_report_2000.html Para. 445: "(…) The Board would like to reiterate that harm reduction programmes can play a part in a comprehensive drug demand reduction strategy (…)" INCB Annual Report for 2003, http://www.incb.org/incb/en/annual_report_2003.html Para. 221: "(…) The Board maintains the position expressed by it already in 1987 that Governments need to adopt measures that may decrease the sharing of hypodermic needles among injecting drug abusers in order to limit the spread of HIV/AIDS. (…)" Para. 222: "(…) [the implementation of] drug substitution and maintenance treatment as one of the forms of medical treatment of drug addicts (…) does not constitute any breach of treaty provisions, whatever substance may be used for such treatment in line with established national sound medical practice. (…)"

WHO EURO	Resolution EUR/RC52/R9 Scaling up response the response to HIV/AIDS in the European Region of WHO (2002) http://www.euro.who.int/Governance/resolutions/2002/20021231_4 "1. URGES member states: (…) (e) to promote, enable and strengthen widespread introduction and expansion of evidence-based targeted interventions for vulnerable/high-risk groups, such as prevention, treatment and harm reduction programmes (e.g. expanded needle and syringe programmes, bleach and condom distribution, voluntary HIV counselling and testing, substitution drug therapy, STI diagnosis and treatment) in all affected communities, including prisons, in line with national policies; (...)"
WHO EMRO	Resolution EM/RC52/R.5 Drug Use and Dependence (2005), http://www.emro.who.int/rc52/media/pdf/EMRC52R5.pdf "1. URGES member states to: (…) 1.2 Make a wide range of approaches and interventions available to address different aspects of primary prevention, through programmes like life skills education, and different levels of care, rehabilitation and harm reduction, with major reliance on community-based mechanisms and not only hospital based services; (...)"
WHO essential medicines	World Health Organization (2007) Model List of Essential Medicines, 15th list March 2007. http://www.who.int/medicines/publications/EssMedList15.pdf List includes methadone and buprenorphine.

(b) Legality of harm reduction services under the Drug Conventions

Numerous reviews – including that done by the UNDCP Legal Affairs Section at the request of the INCB – have concluded that the provision of harm reduction programmes is consistent with and not in violation of, State obligations under the three UN Drug Control Conventions.

UN Drug conventions	The drug conventions express concern for the "health and welfare of mankind" and for the health and social concern with the health and social problems resulting from abuse, and instruct State parties to "adopt appropriate measures" to reduce the human suffering associated with drug use. Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, http://www.incb.org/pdf/e/conv/convention_1961_en.pdf. Preamble:

	"*The Parties*, *Concerned* with the health and welfare of mankind, (…)" Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Doc. E/CN.7/590, available at http://www.stopdrogama.org/download/004.pdf. Para. 3.109: "'Treatment' will typically include counseling, group counseling or referral to a support group, which may involve out-patient day care, day support, in-patient care or therapeutic community support. A number of treatment facilities may prescribe pharmacological treatment such as methadone maintenance, but treatment referrals are most frequently to drug-free programmes. (…)" Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), http://www.unodc.org/pdf/convention_1988_en.pdf. Article 14, para. 4: "The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, inter alia, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations (…)"
UNDCP Legal Opinion	In 2002, the UN Legal Affairs Section issued a decision making clear that harm reduction approaches are legal under the UN Drug Conventions, and noting that this position is "fully consistent" with the stated position of the INCB and with General Assembly and UN system positions. *See* Decision 74/10, Flexibility of Treaty Provisions as Regards Harm Reduction Approaches, prepared by UNDCP 's Legal Affairs Section, E/INCB/2002/W.13/SS.5, 30 September 2002, http://www.tni.org/drugsreform-docs/un300902.pdf, stating: Para. 6: "(…) UNDCP would, however, support a balanced approach that would match supply reduction measures and prevention, treatment, and rehabilitation initiatives, with programmes aimed at reducing the overall health and social consequences and costs of drug abuse for both the individuals and their communities. This would be fully consistent not only with the Declaration on the Guiding Principles of Drug Demand Reduction (Resolution A/RES/S-20/4) of the General Assembly Special Session (GASS-1998), but also with the stated position of the INCB. Moreover, this approach would also be in accord with the United Nations system 's position on *Preventing the Transmission of HIV among Drug Users*, as approved in February 2001." Para. 12: "(…) it could easily be argued that the Guiding Principles of Drug Demand Reduction provide a clear mandate for the institution of harm reduction policies that, respecting cultural and gender differences, provide for a more supportive environment for drug users.

	(…)" Para. 17 on Substitution and Maintenance Treatment : "(…) (methadone) substitution/maintenance treatment could hardly be perceived as contrary to the text or the spirit of the treaties. It is a commonly accepted addiction treatment, with several advantages and few drawbacks. Although results are mixed and dependent on many factors, its implementation along sound medical practice guidelines would not constitute a breach of treaty provisions." Para. 29 on Needle-or Syringe-Exchange: "This is rather straightforward strategy to reduce the risk of contagion with communicable diseases to IV drug abusers who share needles or syringes. It has been introduced in many countries around the world, to help reduce the rate of intravenous transmission of HIV and other transmittable diseases." Paras. 23, 27 and 28 on Drug-injection Rooms: "23. (..) even supplying a drug addict with the drug he depends on could be seen as a sort of rehabilitation and social reintegration, assuming that once his drug requirements are taken care of, he will not need to involve himself in criminal activities to finance his dependence.(…) 27. It would be difficult to assert that, in establishing drug-injection rooms, it is the intent of Parties to actually incite to or induce the illicit use of drugs, or even more so, to associate with, aid, abet or facilitate the possession of drugs. 28. On the contrary, it seems clear that in such cases the intention of governments is to provide healthier conditions for IV drug abusers, thereby reducing their risk of infection with grave transmittable diseases and, at least in some cases, reaching out to them with counselling and other therapeutic options. Albeit how insufficient this may look from a demand reduction point of view, it would still fall far from the intent of committing an offence as foreseen in the 1988 Convention." Para. 35: "(…) It could even be argued that the drug control treaties, as they stand, have been rendered out of synch with reality, since at the time they came into force they could not have possibly foreseen these new threats."
International Narcotics Control Board	International Narcotics Control Board, Annual Report 2003, http://www.incb.org/pdf/e/ar/2003/incb_report_2003_2.pdf Para. 221: "(…) The Board maintains the position expressed by it already in 1987 that Governments need to adopt measures that may decrease the sharing of hypodermic needles among injecting drug abusers in order to limit the spread of HIV/AIDS. (…)" Para. 222: "Many Governments have opted in favour of drug substitution and maintenance treatment as one of the forms of medical treatment of drug addicts, whereby a drug with similar

	action to the drug of dependence, but with a lower degree of risks, is prescribed by a medical doctor for a specific treatment aim. Although results are dependent on many factors, its implementation does not constitute any breach of treaty provisions, whatever substance may be used for such treatment in line with established national sound medical practice. (…)" Para. 218: "(…) Article 14 of the 1988 Convention requires parties to adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering. The ultimate aim of the conventions is to reduce harm."

(c) The obligation in human rights law to ensure access to harm reduction services

Every year, the United Nations General Assembly adopts by consensus a resolution which states that 'countering the world drug problem' must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and 'in particular' with international human rights law. Under international human rights law, in particular under Article 12 of the International Covenant on Economic Social and Cultural Rights, State Parties have the obligation to prevent epidemics and to progressively realise the right to the highest attainable standard of health for their populations. UN human rights bodies – including the Committee on Economic, Social and Cultural Rights and two UN Special Rapporteurs on the Right to Health – have interpreted the provisions of Article 12 as creating an obligation under international law to provide harm reduction services.

General Assembly	The Annual General Assembly resolution on international co-operation to counter the world drug problem contains the following clause "(...) countering the world drug problem is a common and shared responsibility that must be addressed in a multilateral setting, requires an integrated and balanced approach and must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other provisions of international law, and in particular with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and for all human rights and fundamental freedoms, and on the basis of the principles of equal rights and mutual respect;" [emphasis added] See, for example, GA Res 62/176 adopted in December 2007 available at: http://www.un.org/ga/62/resolutions.shtml Further to that annual statement, the following observations and recommendations of UN human rights entities in the context of harm reduction are important:
UN Special Rapporteur on Torture	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, http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf On opioid substitution therapy:

	Para. 57: ”Drug users are particularly vulnerable when deprived of their liberty. One of the questions in this context concerns withdrawal symptoms and to what extent they may qualify as torture or ill-treatment. There can be no doubt that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment, and the potential for abuse of withdrawal symptoms, in particular in custody situations, is evident. In a 2003 case, without specifically stating that the woman died from withdrawal, the European Court of Human Rights found a violation of the prohibition of inhuman or degrading treatment or punishment based on “the responsibility owed by prison authorities to provide the requisite medical care for detained persons”. Moreover, if withdrawal symptoms are used for any of the purposes cited in definition of torture enshrined in article 1 of the Convention against Torture, this might amount to torture.” Para. 58: “Also at later stages of detention, access of detainees to medical treatment, including access to opioid substitution therapy, is often severely restricted. Whereas the World Health Organization (WHO), the United Nations Office on Drugs and Crime and UNAIDS all concur that [opioid substitution] therapy is the most effective intervention available for the treatment of opioid dependence and a critical component of efforts to prevent the spread of HIV among injecting drug users, that it considerably reduces mortality and epidemics among drug users and that it improves uptake and adherence to antiretroviral treatment for HIV-positive opiate drug users, in some developing and transitional countries, the most effective treatments for opiate addiction are available to fewer than 1 per cent of those in need. According to recent reports, only in 33 countries, persons in detention have access to the therapy (this does not mean generalized access, but availability in at least one prison).” Para. 71: “(…) [F]rom a human rights perspective, drug dependence should be treated like any other health-care condition. (...) denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law. (…)” On needle exchange programmes: Paras. 60-61: “On average, 1 of every 10 new HIV infections is caused by injected drug use, and in some countries and regions, this percentage is much higher. (…) In his report of March 2007 (A/61/816) the Secretary-General stated that estimates from 94 low- and middle-income countries show that the proportion of injecting drug users receiving some type of prevention services was 8 per cent in 2005, and observed that this indicates “virtual neglect of this most-at-risk population”. (…) although there is strong evidence that needle and syringe programmes play a crucial role in the prevention of HIV infection, only in eight countries do prisoners have access to such programmes.”

	Para. 74: "Regarding the review process, decided by the General Assembly at its special session in 1998, to be held in Vienna in March 2009, the Special Rapporteur recommends that States and the relevant United Nations agencies reassess their policies, bearing in mind the following points: (a) States should ensure that their legal frameworks governing drug dependence treatment and rehabilitation services are in full compliance with international human rights norms; (b) States have an obligation to ensure that drug dependence treatment as well as HIV/hepatitis C prevention and treatment are accessible in all places of detention and that drug dependence treatment is not restricted on the basis of any kind of discrimination; (c) Needle and syringe programmes in detention should be used to reduce the risk of infection with HIV/AIDS; if injecting drug users undergo forcible testing, it should be carried out with full respect of their dignity; (d) States should refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement; (e) 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."
UN Special Rapporteurs on the Right to Health and on Torture	The UN Special Rapporteurs on Torture and on the Right to the Highest Attainable Standard of Health have concluded that State failure to ensure access to harm reduction measures violates State obligations to protect the right to health, and amount to cruel, inhuman and degrading treatment of people who use drugs. They have thus urged the CND Chair and Vice-chairs to ensure that the outcome documents for the March 2009 CND make a strong commitment to harm reduction. *See* Letter to CND Chairperson Ms. Selma Ashipala-Musavyi from Manfred Nowak, Special Rapporteur on the question of torture, and Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, December 10, 2008. Their position reflects earlier statements by the Special Rapporteur on health supporting harm reduction measures. http://www.hrw.org/en/news/2008/12/10/un-human-rights-experts-call-upon-cnd-support-harm-reduction "Harm reduction is an essential HIV prevention measure endorsed by the General Assembly in the Declaration of Commitment on AIDS in 2001 and in the Political Declaration on AIDS in 2006. We have reviewed the Chairperson's draft annex, dated 4 November 2008. Given the General Assembly's endorsement and the global HIV pandemic, we are, however, concerned that it fails to include any reference to harm reduction services. In order for member states to live up to their human rights obligations, and to ensure UN system-wide coherence, we believe that the annex should be amended to include specific language supporting comprehensive harm reduction services." "Harm reduction is essential to the progressive realization of the right to the highest

	attainable standard of health for people who are using drugs, and indeed, communities affected by drug use. Moreover, the Committee Against Torture, the Special Rapporteur on Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Court of Human Rights all have raised concerns that the failure to provide adequate health services to detainees may contribute to conditions amounting to cruel, inhuman and degrading treatment. The failure to ensure access to harm reduction measures – both inside and outside prisons– puts injection drug users at unnecessary and avoidable risk of HIV and other blood-borne infections. We consider that such failure violates State obligations to respect, protect, and fulfil the right to the highest attainable standard of health, and may amount to cruel inhuman and degrading treatment of this vulnerable and marginalized population. We recommend that the annex reflect the commitments that member states made in 2001 and 2006, and include a strong commitment to harm reduction -- including needle and syringe exchange and opioid substitution therapy -- as essential HIV prevention measures."
UN Special Rapporteur on the Right to Health	Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mission to Sweden (28 Feb. 2007) UN Doc A/HRC/4/28/Add.2, available at: http://www2.ohchr.org/english/issues/health/right/visits.htm Para. 61: "These results are in line with the worldwide experience that harm-reduction programmes, including needle exchange programmes and associated health care, promote and protect the health of drug users and reduce transmission of communicable diseases such as hepatitis B and C and HIV, including vertical transmission to newborn children from pregnant intravenous drug users or their partners. These programmes are highly cost-effective." Para. 62: "Harm-reduction programmes are endorsed by the World Health Organization, the United Nations Office on Drugs and Crime and the Joint United Nations Programme on HIV/AIDS. (…) such an important human rights issue cannot be left to the discretion of local government. The Special Rapporteur emphasizes that the Government has a responsibility to ensure the implementation, throughout Sweden and as a matter of priority, of a comprehensive harm-reduction policy, including counselling, advice on sexual and reproductive health, and clean needles and syringes." Statement of current UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Anand Grover, on harm reduction and the right to health in Harm Reduction and Human Rights: The Global Response to Drug Related HIV Epidemics, International Harm Reduction Association, 2009, http://www.ihra.net/Assets/1407/1/GlobalResponseDrugRelatedHIV.pdf P. 4:

	"(...) State Parties have obligations under international law and in particular under Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESR) to prevent epidemics. Therefore, states have an obligation under international law to pursue harm reduction strategies. Under the same provision, State Parties also are obliged to realize the right to highest attainable standard of health, particularly for marginalized communities, such as drug users. This means that drug user communities are entitled to, opioid substitution therapy and drug dependence treatment, both inside and outside prisons. (...)"
UN Committee on Economic Social and Cultural Rights	The UN Committee on Economic, Social and Cultural Rights has interpreted the provision of harm reduction as necessary for states to comply with obligations under the right to health. In 2006, the Committee expressed concern at "the rapid spread of HIV," "in particular among drug users, prisoners, and sex workers," and called on the Tajikistan government to "establish time-bound targets for extending the provision of free (...) harm reduction services to all parts of the country" to meet its right to health obligations. In 2007, the Committee raised concerns about drug users' limited access to opioid substitution therapy in Ukraine, and recommended that the government take action to make it more accessible to them. Committee on Economic, Social, and Cultural Rights, Concluding Observations: Tajikistan (24 November 2006) UN Doc No E/C.12/TJK/CO/1. Para. 69: "The Committee urges the State party to take effective measures to combat the inflow and consumption of illicit drugs and to provide adequate treatment and rehabilitation for drug users." Para. 70: " (…) The Committee also recommends that the State party establish time-bound targets for extending the provision of free testing services, free treatment for HIV and harm reduction services to all parts of the country." Committee on Economic, Social, and Cultural Rights, Concluding Observations: Ukraine (4 January 2008) UN Doc No E/C.12/UKR/CO/5, available at: http://www2.ohchr.org/english/bodies/cescr/cescrs39.htm Para. 28: "The Committee is gravely concerned at the high prevalence of HIV/AIDS in the State party, including among women; discrimination against persons with HIV/AIDS and high-risk groups such as sex workers, drug users and incarcerated persons; disclosure of information about their HIV status by law enforcement agencies, healthcare and educational institutions; and the limited access by drug users to substitution therapy." Para. 51: "The Committee recommends that the State party (…) make drug substitution therapy and other HIV prevention services more accessible to drug users."
Committee on the	The UN Committee on the Rights of the Child has recognized that unsafe injecting

Rights of the Child	practices can increase vulnerability to HIV among children; expressed concern about their inadequate access to "pragmatic HIV prevention programs related to drug use;" and called on states to implement programs targeted at children's special needs. Committee on the Rights of the Child, General Comment No. 3 (2003), HIV/AIDS and the rights of the children, http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.3.En?OpenDocument Para. 39: "The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. (…) In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances."

2. International Reviews of Evidence

There is strong and consistent evidence that harm reduction interventions which include access to sterile injecting equipment, opioid substitution therapies, and community-based outreach, are the most effective and cost effective means of reducing HIV-related risk behaviours and therefore preventing transmission of HIV, hepatitis C and other blood borne viruses among people who inject drugs. Harm reduction services have been shown to limit or reverse the spread of HIV in people who inject drugs in many countries. There is no evidence of unintended negative consequences such as increased initiation, duration or frequency of injecting drug use, and no country which has started harm reduction programmes has subsequently stopped them.

The evidence regarding the effectiveness of harm reduction interventions was comprehensively reviewed by the U.S. Institute of Medicine. The IOM report found that several key approaches can reduce the use and injection of illegal drugs, and also curb other drug- and sex-related risk behaviour that increases the risk of HIV infection. The report provides evidence-based recommendations regarding drug dependence treatment, sterile needle and syringe access, and outreach and education. The report urges high-risk countries to take immediate steps to make effective HIV prevention strategies widely available. Evidence for the effectiveness of harm reduction interventions including needle exchange, opioid substitution treatment, outreach, and for voluntary testing and counselling has also been reviewed comprehensively by the WHO. UNODC and UNAIDS have issued several technical papers based on the international evidence.

U.S. Institute of Medicine	U.S. Institute of Medicine (2006), Preventing HIV Infection among Injecting Drug Users in High Risk Countries: An Assessment of the Evidence, September 2006 http://books.nap.edu/catalog.php?record_id=11731#toc
World Health Organization	World Health Organization (2004) Evidence for Action Technical Papers: Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS among Injecting Drug Users. Geneva, World Health Organization 2004 http://www.who.int/hiv/pub/prev_care/effectivenesssterileneedle.pdf World Health Organization (2005) Evidence for Action Technical Papers: Effectiveness of drug dependence treatment in HIV prevention among injecting drug users, Geneva, World Health Organization 2005 http://www.emro.who.int/aiecf/web203.pdf
WHO, UNODC, UNAIDS	World Health Organisation, Evidence for Action Technical Papers, Interventions to Address HIV in Prisons: Needle and Syringe Programmes and Decontamination Strategies, WHO/UNODC/UNAIDS, 2007 http://www.who.int/hiv/idu/oms_%20ea_nsp_df.pdf World Health Organisation, Evidence for Action Technical Papers, Interventions to Address HIV in Prisons: Drug Dependence Treatments WHO/UNODC/UNAIDS, 2007 http://www.who.int/hiv/idu/EADrugTreatment.pdf UNAIDS, WHO & UNODC Evidence for Action Technical Papers (2004) Effectiveness of interventions to address HIV in prisons

	WHO, UNAIDS & UNODC (2008) Evidence for action on HIV/AIDS and injecting drug use Policy brief: Policy guidelines for collaborative TB and HIV services for injecting and other drug users WHO, UNAIDS & UNODC (2008) Evidence for Action Technical Papers. Policy Guidelines for Collaborative TB and HIV Services for Injecting and Other Drug Users: An Integrated Approach

3. Global State of Harm Reduction

There are presently eighty-four countries and territories worldwide that support or tolerate harm reduction, explicitly in HIV, hepatitis C or drug-related policy documents (74 countries), and/or through the implementation or tolerance of harm reduction interventions such as needle exchange (77 countries) or opioid substitution therapy (65 countries). The following table lists the countries and territories around the world that support harm reduction in policy or practice.[1]

Guide to reading the table:

Explicit supportive reference to harm reduction in national policy documents: Countries and territories which have an explicit reference to harm reduction in national health or drug-related policy. Of particular interest here is the US, which includes harm reduction in its national HIV[2] and hepatitis C[3] strategy documents, but not in those relating to drug policy.

Needle and syringe exchange programmes operational: Countries and territories which have one or more operational NSP sites.

Opioid substitution therapy programmes operational: Countries and territories which have one or more sites which provide opioid substitution therapy as maintenance (not for detoxification only).

Drug consumption rooms (DCRs): Countries and territories which have one or more operational DCRs (or safer injecting facilities).

Needle exchange in prisons: Countries and territories which have one or more prisons with operational NSP.

Opioid substitution therapy in prisons: Countries and territories which have one or more prisons with opioid substitution therapy as maintenance (not for detoxification only).

Please note that this listing does not indicate the scope, quality or coverage of services.

[1] The data are largely drawn from Cook C & Kanaef N (2008) *Global State of Harm Reduction 2008: Mapping the response to drug-related HIV and hepatitis C epidemics* (International Harm Reduction Association, London). This document has been reviewed and updated in February 2009 by the International Harm Reduction Association, Eurasian Harm Reduction Network, Sub-Saharan African Harm Reduction Network, International Harm Reduction Development Program of the Open Society Institute, Caribbean Harm Reduction Coalition, Middle East and North Africa Harm Reduction Network, European Monitoring Centre for Drugs and Drug Addiction. International HIV/AIDS Alliance (UK and Ukraine) and Intercambios Association Civil.

[2] Centers for Disease Control and Prevention (2007) CDC HIV Prevention Strategic Plan: Extended Through 2010. Atlanta: CDC

[3] Centers for Disease Control and Prevention (2001) National Hepatitis C Prevention Strategy. Atlanta: CDC

Country (*or territory)*	Explicit supportive reference to harm reduction in national policy documents	Needle and syringe exchange programmes operational	Opioid substitution therapy programmes operational	Drug consumption rooms	Needle exchange in prisons	Opioid substitution therapy in prisons
ASIA						
Afghanistan	✓	✓				
Bangladesh	✓	✓				
Cambodia	✓	✓				
China *(Taiwan)* *(Hong Kong Special Administrative Region)*	✓ ✓ ✓	✓ ✓	✓ ✓ ✓			
India	✓	✓	✓			✓
Indonesia	✓	✓	✓			✓
PDR Laos	✓					
Malaysia	✓	✓	✓			✓
Maldives			✓			
Myanmar	✓	✓	✓			
Nepal	✓	✓	✓			
Pakistan	✓	✓				
Philippines		✓				
Thailand		✓	✓			
Vietnam	✓	✓	✓			
CENTRAL AND EASTERN EUROPE AND CENTRAL ASIA						
Albania	✓	✓	✓			✓
Armenia	✓	✓			✓	
Azerbaijan		✓	✓			
Belarus	✓	✓	✓			
Bosnia and Herzegovina		✓	✓			
Bulgaria	✓	✓	✓			
Croatia	✓	✓	✓			✓
Czech Republic	✓	✓	✓			✓
Estonia	✓	✓	✓			
Georgia	✓	✓	✓			✓
Hungary	✓	✓	✓			
Kazakhstan	✓	✓	✓			
Kyrgyzstan	✓	✓	✓		✓	
Latvia	✓	✓	✓			
Lithuania	✓	✓	✓			
Macedonia	✓	✓	✓			✓
Moldova	✓	✓	✓		✓	✓
Montenegro	✓	✓	✓			✓
Poland	✓	✓	✓			✓
Romania	✓	✓	✓		✓	✓
Russia		✓				
Serbia	✓	✓	✓			✓
Slovakia	✓	✓	✓			
Slovenia	✓	✓	✓			✓
Tajikistan	✓	✓				

Ukraine	✓	✓	✓			

Uzbekistan	✓	✓	✓			
LATIN AMERICA						
Argentina	✓	✓				
Brazil	✓	✓				
Colombia	✓					
Mexico	✓	✓	✓			
Paraguay		✓				
Uruguay	✓	✓				
MIDDLE EAST and NORTH AFRICA						
Egypt		✓				
Iran	✓	✓	✓		✓	✓
Israel	✓	✓	✓			
Lebanon	✓	✓	✓			
Morocco	✓	✓				
Oman		✓				
NORTH AMERICA						
Canada	✓	✓	✓	✓		✓
United States *(Puerto Rico)*	✓ *nk*	✓ ✓	✓ ✓			 ✓
OCEANIA						
Australia	✓	✓	✓	✓		✓
New Zealand	✓	✓	✓			✓
SUB-SAHARAN AFRICA						
Mauritius	✓	✓	✓			✓
South Africa	✓		✓			
Tanzania *(Zanzibar)*	✓ ✓					
WESTERN EUROPE						
Austria	✓	✓	✓			✓
Belgium	✓	✓	✓			✓
Cyprus	✓	✓	✓			
Denmark	✓	✓	✓			✓
Finland	✓	✓	✓			✓
France	✓	✓	✓			✓
Germany	✓	✓	✓	✓	✓	✓
Greece	✓	✓	✓			
Ireland	✓	✓	✓			✓
Italy	✓	✓	✓			✓
Luxembourg	✓	✓	✓	✓	✓	✓
Malta	✓	✓	✓			✓
Netherlands	✓	✓	✓	✓		✓
Norway	✓	✓	✓	✓		✓
Portugal	✓	✓	✓		✓	✓
Spain	✓	✓	✓	✓	✓	✓
Sweden	✓	✓	✓			✓
Switzerland	✓	✓	✓	✓	✓	✓
United Kingdom	✓	✓	✓			✓

B. Access to Controlled Medicines

1. Role of WHO and UN Drug Control Organs in Scheduling Substances

Under the UN drug conventions, the UN drug control bodies and the World Health Organization (WHO) have a joint mandate with respect to controlled medicines. The Commission on Narcotic Drugs (CND), on the recommendation of WHO, can schedule substances. WHO, the International Narcotics Control Board, and CND have a joint duty to ensure the availability of controlled substances that are also included in the WHO Model List of Essential Medicines.

UN Drug Conventions	Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, http://www.incb.org/pdf/e/conv/convention_1961_en.pdf Art. 3: "CHANGES IN THE SCOPE OF CONTROL 1. Where a Party or the World Health Organization has information which in its opinion may require an amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification. (…) iii) If the World Health Organization finds that the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into a drug, it shall communicate that finding to the Commission which may, in accordance with the recommendation of the World Health Organization, decide that the substance shall be added to Schedule I or Schedule II. (…)" Art. 8: "FUNCTIONS OF THE COMMISSION The Commission is authorized to consider all matters pertaining to the aims of this Convention, and in particular: a) To amend the Schedules in accordance with article 3; b) To call the attention of the Board to any matters which may be relevant to the functions of the Board; c) To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and d) To draw the attention of non-parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith." Convention on Psychotropic Substances (1971), http://www.incb.org/pdf/e/conv/convention_1971_en.pdf Art. 2: "SCOPE OF CONTROL OF SUBSTANCES 1. If a Party or the World Health Organization has information relating to a substance not yet under international control which in its opinion may require the addition of that substance to any of the Schedules of this Convention, it shall notify the Secretary-General

	and furnish him with the information in support of that notification. (…) 4. If the World Health Organization finds: a) That the substance has the capacity to produce i) 1) A state of dependence, and 2) Central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood, or ii) Similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and b) That there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control, the World Health Organization shall communicate to the Commission an assessment of the substance (…). 5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. (…)"
Commentary on the Convention on Psychotropic Substances	Commentary on the Convention on Psychotropic Substances, UN Doc. E/CN.7/589, http://www.stopdrogama.org/download/003.pdf Art. 2 – Scope of Control Substances General Comments pp. 30-31: "3. (…) In whatever action it wishes to take the Commission must, however, take into account the findings and recommendations of the World Health Organization, and must consider that Organization's assessments to be determinative as to medical and scientific matters; (…)"

2. Cooperation in Ensuring Adequate Availability of Controlled Medicines

The importance of cooperation between WHO and the UN drug control agencies in ensuring availability of controlled medicines has been affirmed repeatedly by the INCB, the CND, the UN Economic and Social Council, and the World Health Assembly.

INCB Annual Report 2007	International Narcotics Control Board, Report of the International Narcotics Control Board for 2007, http://www.incb.org/incb/en/annual-report-2007.html Paras. 208 and 213: Access to opioid analgesics "208. The Board has brought to the attention of the international community the fact that the levels of consumption of opioid analgesics for the treatment of moderate to severe pain were low in a number of countries. (…)" "213. The Board encourages all Governments and the international organizations concerned, such as the United Nations Office on Drugs and Crime (UNODC), to cooperate with WHO in the implementation of the programme, with a view to promoting rational use of opioid analgesics by health-care professionals. The Board calls on Governments to provide resources to WHO for the implementation of the programme."
ECOSOC Resolution	Resolution ECOSOC 2005/25 on Treatment of pain using opioid analgesics (36th plenary meeting 22 July 2005), http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-25.pdf "*The Economic and Social Council*, (…) 1. *Recognizes* the importance of improving the treatment of pain, including by the use of opioid analgesics, as advocated by the World Health Organization, especially in developing countries, and calls upon Member States to remove barriers to the medical use of such analgesics, taking fully into account the need to prevent their diversion for illicit use; 2. *Invites* the International Narcotics Control Board and the World Health Organization to examine the feasibility of a possible assistance mechanism that would facilitate the adequate treatment of pain using opioid analgesics and to inform the Commission on Narcotic Drugs at its forty-ninth session of the results of that examination;"
WHO/INCB Joint Report 2007	World Health Organization and International Narcotics Control Board, Assistance Mechanism to Facilitate Adequate Treatment of Pain Using Opioid Analgesics. Joint Report of the Director-General of the World Health Organization and the President of the International Narcotics Control Board, 2 March 2007, http://www.who.int/medicines/areas/quality_safety/Joint_Report-WHO-INCB.pdf Creating Access to Controlled Medicines Program as mechanism to facilitate adequate treatment of pain using opioid analgesics and other medicines listed in WHO Model List of Essential Medicines made from controlled substances.

WHO Framework	Framework: Access to Controlled Medications Programme (WHO 2007), http://www.who.int/medicines/areas/quality_safety/Framework_ACMP_withcover.pdf
CND Annual Report 2006	Commission on Narcotic Drugs, Report on the forty-ninth session, 2006, E/CN.7/2006/10 Para. 99: "Regarding the issue of supply of and demand for opiates used for medical purposes, the Commission welcomed the joint activities undertaken by WHO and the International Narcotics Control Board to facilitate the treatment of pain using opioid analgesics. Governments were urged to ensure that opioids were available to patients who required them."
WHO Briefing Note 2008	World Health Organization Briefing note: Access to Controlled Medications Programme (September 2008) P. 1-2: "Pain Management Approximately 80% of the world's population has either no or insufficient access to treatment for moderate to severe pain. This is true for both developing and industrialized countries. Each year tens of millions of patients suffer moderate to severe pain without treatment: • 0.8 million end-stage HIV/AIDS patients • about 4 million terminal cancer patients • patients suffering injuries, caused by accidents and violence • patients recovering from surgery • women in labour • patients with chronic illnesses • paediatric patients" "Balancing prevention and medical availability Many factors contribute to the lack of access to controlled medicines. There is a need for greater awareness among policy makers, health-care professionals and the general public to dispel the myth that opioid analgesics (i.e. pain killers derived from opium, such as morphine) will do harm to patients and cause dependence. The fear of dependence upon pain treatment is largely unfounded, as almost all patients are able to stop their opioid medication at the end of their treatment with no long-lasting effects. Although substitution treatment does not terminate dependence, it removes most of the detrimental health effects for the patient, as well as the harmful impact of drug dependency on a society. Ergometrine, which can be used in obstetrics is often unavailable for use in childbirth. Although not a drug of abuse it can be used as a starting material for the synthesis of such drugs."
WHA Resolution	World Health Assembly, Resolution WHA 58.22 on Cancer prevention and control (Ninth plenary meeting, 25 May 2005 – Committee B, third report), http://www.who.int/gb/ebwha/pdf_files/WHA58/WHA58_22-en.pdf "The Fifty-eighth World Health Assembly, (…)

	1. URGES Member States: (…) (15) to ensure the medical availability of opioid analgesics according to international treaties and recommendations of WHO and the International Narcotics Control Board and subject to an efficient monitoring and control system; (…) 2. REQUESTS the Director-General: (…) (18) to examine jointly with the International Narcotics Control Board the feasibility of a possible assistance mechanism that would facilitate the adequate treatment of pain using opioid analgesics; (…)"

3. Obligation to Ensure Access to Controlled Medicines under the Drug Conventions

States should ensure access to medications included in the WHO Model List of Essential Medicines, including those that are controlled under the UN drug conventions, as part of their core obligations to protect the right to the highest attainable standard of health. The UN drug conventions themselves also contain an obligation for member states to ensure adequate availability of controlled medicines.

Single Convention on Narcotic Drugs	Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, http://www.incb.org/pdf/e/conv/convention_1961_en.pdf Preamble: "(…) *Recognizing* that the **medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes**, (…)" Art. 21: "LIMITATION OF MANUFACTURE AND IMPORTATION (…) 4. a) If it appears from the statistical returns on imports or exports (article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts shown to have been exported, and after deduction of any excess as established in paragraph 3 of this article, the Board may notify this fact to States which, in the opinion of the Board, should be so informed; b) On receipt of such a notification, Parties shall not during the year in question authorize any further exports of the drug concerned to that country or territory, except: i) In the event of a supplementary estimate being furnished for that country or territory in respect both of any quantity over imported and of the additional quantity required, or ii) **In exceptional cases where the export, in the opinion of the Government of the exporting country, is essential for the treatment of the sick."**
INCB Special Report 1995	International Narcotics Control Board, Report of the International Narcotics Control Board for 1995 Availability of Opiates for Medical Needs, Special report prepared pursuant to Economic and Social Council resolutions 1990/31 and 1991/43, http://www.incb.org/pdf/e/ar/1995/suppl1en.pdf Para. 1: "The Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol establishes a **dual drug control obligation: to ensure adequate availability of narcotic drugs, including opiates, for medical and scientific purposes, while at the same time preventing illicit production of, trafficking in and use of such drugs.** (…)"
WHO Essential Medicines	The World Health Organization Model Lists of Essential Medicines, 15th list, March 2007, http://www.who.int/medicines/publications/08_ENGLISH_indexFINAL_EML15.pdf p. 25: "24.5 Medicines used in substance dependence programmes" include **methadone** and **buprenorphine**.

4. Obligation to Ensure Access to Controlled Medicines and the Rights to the Highest Attainable Standard of Health and to Be Free from Torture and Cruel, Inhuman and Degrading Treatment or Punishment

All Parties to the drug conventions are - without exception - WHO Member States, and have agreed on the WHO Constitution, which recognizes the right to the highest attainable standard of health. As Members of the United Nations, they should have due regard for its foundational documents, including the Universal Declaration of Human Rights, article 25 (Right to access medical care adequate for health and well-being). Most – if not all – Parties to the drug conventions are obligated under other international instruments that recognize the right to health, including article 12 of the International Covenant on Economic, Social and Cultural Rights; article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965; articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979; and article 24 of the Convention on the Rights of the Child of 1989.
The UN Special Rapporteur on Torture has also stated that government failure to ensure controlled medicines to treat drug dependence or for pain treatment can constitute cruel, inhuman or degrading treatment or punishment.

ICESCR	International Covenant on Economic, Social and Cultural Rights (1966), http://www2.ohchr.org/english/law/cescr.htm Art. 12 "1. The States Parties to the present Covenant **recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.** (…)"
WHO Constitution	Constitution of the World Health Organization (1946), http://www.who.int/governance/eb/who_constitution_en.pdf Preamble: "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." Art. 1: "The objective of the World Health Organization (…) shall be the **attainment by all peoples of the highest possible level of health**."
UDHR	Universal Declaration of Human Rights (1948), http://www.unhchr.ch/udhr/ Art. 25: "(1) 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, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children,

	whether born in or out of wedlock, shall enjoy the same social protection."
Convention on the Rights of the Child	Convention on the Rights of the Child, http://www2.ohchr.org/english/law/pdf/crc.pdf Art. 24: "1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (…)"
Committee on ESC Rights	Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health, http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En Para. 12: "The right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State party: (a) Availability. Functioning public health and health-care facilities, good and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs. (…)" Para. 17: "The creation of conditions which would assure to all medical attention in the event of sickness" (art. 12.2 (d)), both physical and mental, includes the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level; provision of essential drugs; and appropriate mental health treatment and care. (…)" Para. 25 on older persons: "With regard to the realization of the right to health of older persons, the Committee, in accordance with paragraphs 34 and 35 of General Comment No. 6 (1995), reaffirms the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment. Such measures should be based on periodical check-ups for both sexes; physical as well as psychological rehabilitative measures aimed at maintaining the functionality and autonomy of older persons; and attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity." Para. 34:

	"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; (...)" Committee on ESC Rights, Concluding Observations: Ukraine (4 January 2008) UN Doc No E/C.12/UKR/CO/5, available at: http://www2.ohchr.org/english/bodies/cescr/cescrs39.htm Para. 28: "The Committee is gravely concerned at the high prevalence of HIV/AIDS in the State party, including among women; discrimination against persons with HIV/AIDS and high-risk groups such as sex workers, drug users and incarcerated persons; disclosure of information about their HIV status by law enforcement agencies, healthcare and educational institutions; and the limited access by drug users to substitution therapy." Para. 51: "The Committee recommends that the State party (...) make drug substitution therapy and other HIV prevention services more accessible to drug users."
Special Rapporteurs on torture and health – Letter to the chair of CND	Letter to CND Chairperson Ms. Selma Ashipala-Musavyi from Manfred Nowak, Special Rapporteur on the question of torture, and Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, December 10, 2008, http://www.hrw.org/en/news/2008/12/10/un-human-rights-experts-call-upon-cnd-support-harm-reduction "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. Governments also have an obligation to take measures to protect people under their jurisdiction from inhuman and degrading treatment. Failure of governments to take reasonable measures to ensure accessibility of pain treatment, which leaves millions of people to suffer needlessly from severe and often prolonged pain, raises questions whether they have adequately discharged this obligation." "Lack of access to essential medicines, including for pain relief, is a global human rights issue and must be addressed forcefully in the next ten-year drug strategy. (…)"
Special Rapporteur on Torture	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, http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf Para. 68: "Worldwide, millions of people continue to suffer from often severe pain, although already in 1961, the Single Convention, in its preamble, recognized that "the medical use of

	narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes", and its articles 4 and 21 further referred to the need for drugs to be available for medical purposes and the treatment of the sick. (…)" Para. 69: "However, access to narcotic drugs is still severely restricted and sometimes unavailable, in particular in the global South. (…)" Para. 70: "Apart from poverty and lack of access to medical care in general, this appears to be partly caused by strict narcotic drug control laws and practices devised at the national level, sometimes underpinned by international drug control policies, at least in the past. (…)" Para. 71: "(…) [F]rom a human rights perspective, drug dependence should be treated like any other health-care condition. (…) denial of medical treatment and/or absence of access to medical care in custodial situations may constitute cruel, inhuman or degrading treatment or punishment and is therefore prohibited under international human rights law. (…)" Para. 72: " (…) [T]he Special Rapporteur is of the opinion 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." Para. 74: "(…) (e) 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."

C. Law Enforcement and Flexibility of the Drug Conventions

1. Latitude and Flexibility of the Drug Conventions

Drug Conventions	Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, http://www.incb.org/pdf/e/conv/convention_1961_en.pdf Art. 36: Penal Provisions "1.a) **Subject to its constitutional limitations**, each Party shall adopt such measures as will ensure that (…) contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. (…) 2. **Subject to the constitutional limitations of a Party, its legal system and domestic law**, (…)" Convention on Psychotropic Substances (1971), http://www.incb.org/pdf/e/conv/convention_1971_en.pdf Art. 10: Warnings on Packages, and Advertising "(…) 2. Each Party shall, **with due regard to its constitutional provisions**, prohibit the advertisement of such substances to the general public." Art. 21: Action Against the Illicit Traffic "Having **due regard to their constitutional, legal and administrative systems**, the Parties shall: (…)" Art. 22: Penal Provisions "1.a) **Subject to its constitutional limitations**, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, (…) 2. **Subject to the constitutional limitations of a Party, its legal system and domestic law**, (…)" Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), http://www.unodc.org/pdf/convention_1988_en.pdf Art. 3: Offences and Sanctions "1. (…) c) **Subject to its constitutional principles and the basic concepts of its legal system**: (…) 2. **Subject to its constitutional principles and the basic concepts of its legal system**, each Party shall adopt such measures as may be necessary to establish as a criminal

	offence under domestic law (…) 4. (…) c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare. d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender. (…) 10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties. (…)"
Commentary of the 1988 Convention	Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Doc. E/CN.7/590, http://www.stopdrogama.org/download/004.pdf Para. 3.37 p. 60: "(…) it should be borne in mind that, following previous practice, the obligations are stated with a deliberate degree of generality. Consequently, each party is left with considerable flexibility in determining how best, in light of its moral, cultural and legal traditions, to secure the required goal. (…)" Para. 3.95, p. 82: "It will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence. Rather, it approaches the issue of non-medical consumption indirectly by referring to the intentional possession, purchase or cultivation of controlled substances for personal consumption. (…)"
INCB Annual Report 2001	INCB Annual Report for 2001, http://www.incb.org/incb/en/annual_report_2001.html para. 211: "(…) The international drug control treaties do grant some latitude with regard to the penalization of personal consumption-related offences. Parties to the 1961 Convention are under obligation not to permit the possession of drugs for personal non-medical consumption. Parties to the 1988 Convention are required to establish as criminal offences activities preparatory to personal consumption, subject to each party's constitutional principles and the basic concepts of its legal system."

2. Penalties and Sanctions for Drug-Related Offences

(a) Non-Custodial Measures and Depenalization

Convention on the Rights of the Child	Convention on the Rights of the Child (1989), http://www2.ohchr.org/english/law/crc.htm Art. 37: "(…) (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or **imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort** and for the shortest appropriate period of time; (…)"
Committee on the Rights of the Child	Committee on the Rights of the Child – General Comment No. 10 on Children's rights in Juvenile Justice (2007), http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf Para. 79: "The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily." Para. 80: **An effective package of alternatives must be available** (…),for the States parties to realize their obligation under article 37(b) CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than 'widening the net' of sanctioned children. In addition, the **States Parties should take adequate legislative and other measures to reduce the use of pretrial detention**. Use of pretrial detention as a punishment violates the presumption of innocence. (…)" Para. 81: "The Committee recommends the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or judicial body, and the child should be provided with legal or other appropriate assistance." Para. 23: "(…) It is (…) necessary – as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate both to their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40(4))." Para. 28: "(…) [T]he juvenile justice system should provide for ample opportunities to deal with

	children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort. (…)States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention."
General Assembly – the Tokyo Rules	United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), adopted by GA Res 45/110 (14 December 1990), http://www2.ohchr.org/english/law/tokyorules.htm Para. 1.5: "Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender." Para. 2.1: "The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. (…)" Para. 2.3: "In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way so that consistent sentencing remains possible." Para. 2.7: "The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction." Para. 3.4: "Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent."

(b) Proportionality of Penalties and Sanctions

INCB Annual Reports	International Narcotics Control Board, Report of the International Narcotics Control Board for 2007, http://www.incb.org/incb/en/annual-report-2007.html The first chapter of the report is dedicated to the issue of proportionality and drug-related offences.

	Para. 7: "Transposing the international drug control conventions into domestic law is subject to the internationally recognized principle of proportionality. The principle requires a State's response to anything that may harm peace, order or good governance to be proportionate. In a narrower, criminal justice sense, the principle permits punishment as an acceptable response to crime, provided that it is not disproportionate to the seriousness of the crime. (…)" Para. 13: "The conventions generally require parties to establish a wide range of drug-related activities as criminal offences under their domestic law but permit parties to respond to them proportionately. (…)" Para. 32: "The internationally recognized United Nations standards and norms in the treatment of prisoners, alternatives to imprisonment, the use of force by the police, juvenile justice and the protection of victims provide useful guidance for States in deciding what custodial and non-custodial penalties and sanctions to adopt and apply, for what offences, to which offenders, in what circumstances and at what stage of the criminal justice process. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) are the agreed international standards in setting and appropriately applying penalties, sanctions and noncustodial alternatives, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) deal specifically with those and other issues in the juvenile justice context." Para. 38: "Due respect for universal human rights, human duties and the rule of law is important for effective implementation of the international drug control conventions. Non-respect for them can prejudice the ability of the criminal justice system to enforce the law, can lead to discriminatory disproportionate responses to drug offending and can undermine the conventions. (…)" Para. 58: "The international drug control conventions encourage and facilitate proportionate responses by States to drug-related offences and offenders. Disproportionate responses undermine the aims of the conventions and undermine the rule of law." Para. 60: "(…) (c) *Alternative sentencing*. Governments should consider widening the range of custodial and noncustodial options for drug-related offences by illicit drug users so that authorities can respond proportionately to the circumstances of each case. (…)" Para. 61: "(…) [T]he Board calls on Governments to comprehensively review the responses by their legislative, judicial and executive arms of government to drug-related offences, in order to ensure that they are proportionate, and to make appropriate changes to correct any

	shortcomings. (…)" International Narcotics Control Board, Report of the International Narcotics Control Board for 1996, http://www.incb.org/incb/en/annual_report_1996.html Chapter I: "Drug Abuse and the Criminal Justice System" Para. 23: "The Board considers it vital that the penalties imposed by criminal justice systems be commensurate with the seriousness of the offences. (…)Making greater use of treatment and alternative penalties, as well as imposing shorter prison sentences on minor offenders, in accordance with the provisions of the 1988 Convention would result in more effective administration of justice and would free resources to deal more effectively with major instigators of drug-related crime." Para. 26: "The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders invited Member States to avoid, reduce or eliminate overcrowding in prisons by considering the use of a combination of measures: a reduction in the length of prison sentences available; the substitution of non-custodial sanctions or measures; and the reduction of pre-trial detention by facilitating pre-trial release or the use of bail and recognizances. The Eighth Congress also invited Member States to consider the use of non-custodial measures in relation to the personal use of drugs and to provide medical, psychological and social treatment programmes for drug-dependent offenders in appropriate cases. (…)"
The Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), http://www.un.org/documents/ga/res/40/a40r033.htm Rule 5: "5. Aims of juvenile justice 5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. Commentary Rule 5 refers to two of the most important objectives of juvenile justice. (…) The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life). (…)

	In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. (…)"
UN Special Rapporteur on Torture	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 (2009), http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf Para. 66: "The Special Rapporteur is concerned that, in some countries, drug offences are punishable by the death penalty and consequently convicts are held on death row or sentenced to life-imprisonment. The Human Rights Committee, in its general comment No. 6 on the right to life, clearly stated that, under article 6 (2), States were obliged to restrict the application of the death penalty to the "most serious crimes", which does not include drug-related crimes. This position has been reiterated by the Special Rapporteur on extrajudicial, summary or arbitrary executions. In the Special Rapporteur on torture's view, drug offences do not meet the threshold of most serious crimes. Therefore, the imposition of the death penalty on drug offenders amounts to a violation of the right to life, discriminatory treatment and possibly, as stated above, also their right to human dignity." Para. 74: "(…) (d) States should refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement; (…)"

(c) Treatment of Prisoners

UN Standard Minimum Rules for the Treatment of Prisoners	UN Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, http://www.unhchr.ch/html/menu3/b/h_comp34.htm Para. 22(2): "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."
UN Special Rapporteur on Torture	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 (2009), http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf

	The Special Rapporteur stressed in this report that the UN Standard Minimum Rules for the Treatment of Prisoners fully apply to drug users: Para. 62: "The Special Rapporteur would like to stress that the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII), fully apply to drug users, in particular rule 22 (2), which requires that detainees have access to specialist treatment. (…)" More generally on the issue of the treatment of prisoners: Para. 67: "(…) [T]he Special Rapporteur is concerned that, in many countries, persons accused or convicted of drug-related crimes are subject to other forms of discriminatory treatment in places of detention, including solitary confinement, special prison regimes and poor detention conditions. (…)" Para. 71: "(…) States have a positive obligation to ensure the same access to prevention and treatment in places of detention as outside." Para. 74: "(…) (b) States have an obligation to ensure that drug dependence treatment as well as HIV/hepatitis C prevention and treatment are accessible in all places of detention and that drug dependence treatment is not restricted on the basis of any kind of discrimination; (c) Needle and syringe programmes in detention should be used to reduce the risk of infection with HIV/AIDS; if injecting drug users undergo forcible testing, it should be carried out with full respect of their dignity; (d) States should refrain from using capital punishment in relation to drug-related offences and avoid discriminatory treatment of drug offenders, such as solitary confinement; (…)" The Special Rapporteur also refers to a 2006 European Court of Human Rights case, *Khudobin v. Russia*.
ECHR	ECHR 2003/7 Case of McGlinchey and others v. The United Kingdom, 29 April 2003, no.50390/99 (Second Section) The applicants were the parents of a heroin dependent woman who died in a UK prison while serving a four-month sentence for theft. They alleged an Article 3 violation for the State's failure to provide adequate health care to the woman while in detention, including failure to properly treat her withdrawal symptoms from heroin. While the applicants alleged that Lofexidine (to relieve her withdrawal symptoms) was withheld from the prisoner as punishment, the Court disagreed finding that the medical

	records indicated this decision was made on proper medical grounds due to a drop in her blood pressure. However, the Court did find the UK in breach of its Article 3 obligations based upon the responsibility owed by prison authorities to provide the requisite medical care for detained persons. Although the Court did not specifically state that the woman died from withdrawal, the symptoms described certainly point to heroin withdrawal as a contributor. Para. 57: "The evidence indicates to the Court that by the morning of 14 December 1998 Judith McGlinchey, a heroin addict whose nutritional state and general health were not good on admission to prison, had suffered serious weight loss and was dehydrated. This was the result of a week of largely uncontrolled vomiting symptoms and an inability to eat or hold down fluids. This situation, in addition to causing Judith McGlinchey distress and suffering, posed very serious risks to her health, as shown by her subsequent collapse. Having regard to the responsibility owed by prison authorities to provide the requisite medical care for detained persons, the Court finds that in the present case there was a failure to meet the standards imposed by Article 3 of the Convention. It notes in this context the failure of the prison authorities to provide accurate means of establishing Judith McGlinchey's weight loss, which was a factor that should have alerted the prison to the seriousness of her condition, but was largely discounted due to the discrepancy of the scales. There was a gap in the monitoring of her condition by a doctor over the weekend when there was a further significant drop in weight and a failure of the prison to take more effective steps to treat Judith McGlinchey's condition, such as her admission to hospital to ensure the intake of medication and fluids intravenously, or to obtain more expert assistance in controlling the vomiting." <u>ECHR 2007/2 case of Khudobin v. Russia, 26 October 2006, no. 59696/00 (third section)</u> The European Court of Human Rights found that the absence of medical assistance of a HIV-positive prisoner, in the given context, amounted to degrading treatment. Para. 96: "(…) [T]he applicant was HIV-positive and suffered from a serious mental disorder. This increased the risks associated with any illness he suffered during his detention and intensified his fears on that account. In these circumstances the absence of qualified and timely medical assistance, added to the authorities' refusal to allow an independent medical examination of his state of health, created such a strong feeling of insecurity that, combined with his physical sufferings, it amounted to degrading treatment within the meaning of Article 3."

D. Ensuring Protection against Torture in Law Enforcement Measures: Extradition and the Principle of non-Refoulement

Special Rapporteurs on torture and health – Letter to the chair of CND	Letter to CND Chairperson Ms. Selma Ashipala-Musavyi from Manfred Nowak, Special Rapporteur on the question of torture, and Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, December 10, 2008, http://www.hrw.org/en/news/2008/12/10/un-human-rights-experts-call-upon-cnd-support-harm-reduction "The principle of non-refoulement establishes an absolute prohibition against the obligatory departure (for example, by extradition, expulsion, return, or extraordinary rendition) of a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture or other cruel, inhuman, or degrading treatment or punishment. This principle is codified in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the International Covenant on Civil and Political Rights." "Many states, commendably, will not extradite those who may face the death penalty. This is of particular relevance to drug policy due to the number of death sentences handed down and executions carried out for drug offences each year. While capital punishment is not prohibited entirely under international law, the weight of opinion indicates clearly that drug offences do not meet the threshold of "most serious crimes" to which the death penalty might lawfully be applied. In addition, States that have abolished the death penalty are prohibited to extradite any person to another country where he or she might face capital punishment."
Convention against Torture	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), http://www2.ohchr.org/english/law/cat.htm Art. 3.1: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."
ICCPR	International Covenant on Civil and Political Rights (1966), http://www.unhchr.ch/html/menu3/b/a_ccpr.htm Art. 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989), http://www2.ohchr.org/english/law/ccpr-death.htm

	Art. 1.2: "Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction."
UN Human Rights Committee GA 20	UN Human Rights Committee, General Comment No. 20 (1992), on non-refoulement, http://www.unhchr.ch/tbs/doc.nsf/0/6924291970754969c12563ed004c8ae5?Opendocument Para. 9: "(…) States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. (…)"
Convention Relating to the Status of Refugees	Convention relating to the Status of Refugees (1951), http://www2.ohchr.org/english/law/refugees.htm Art. 33: "1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (…)"
Inter-American Convention to Prevent and Punish Torture	Inter-American Convention to Prevent and Punish Torture (1985), http://www.oas.org/juridico/English/Treaties/a-51.html Art. 13: "(…) Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State. (…)"
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (1951), http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf Art. 3: Prohibition of Torture "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The European Court of Human Rights affirmed the absolute nature of the prohibition of torture or inhuman or degrading treatment or punishment through its interpretation of article 3 of the Convention. In its decision *Chahal v. the United Kingdom*, the Court established that a person may not be deported to a country where they will face a real risk of torture or inhuman or degrading treatment. Chahal v. the United Kingdom (1997) 23 EHRR 413 Para. 74: "However, it is well established in the case-law of the Court that expulsion by a Contracting

	State may give rise to an issue under Article 3 (art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 (art. 3) in the receiving country. In these circumstances, Article 3 (art. 3) implies the obligation not to expel the person in question to that country (…)." A few years earlier, in its decision *Soering v. the United Kingdom* (1989), the Court had considered that the extradition of the applicant to the United States where he would likely be faced with a death penalty sentence was contrary to Article 3 of the Convention, which prohibits torture. Soering v. the United Kingdom (1989) 11 EHRR 439 Para. 111: "(…) [H]aving regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, and to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 (art. 3). A further consideration of relevance is that in the particular instance the legitimate purpose of extradition could be achieved by another means [extradition or deportation to Germany] which would not involve suffering of such exceptional intensity or duration. (…)" "FOR THESE REASONS, THE COURT UNANIMOUSLY 1. Holds that, in the event of the Secretary of State's decision to extradite the applicant to the United States of America being implemented, there would be a violation of Article 3; (...)"
European Convention on Extradition	European Convention on Extradition, Paris, 13.XII.1957, http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm "Article 11 – Capital punishment If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out."
UN Model Treaty on Extradition adopted by the GA	UN Model Treaty on Extradition adopted by General Assembly resolution 45/116, subsequently amended by General Assembly resolution 52/88, http://www.unodc.org/pdf/model_treaty_extradition.pdf Art. 3: Mandatory grounds for refusal "Extradition shall not be granted in any of the following circumstances: (…) *(f)* If the person whose extradition is requested has been or would be subjected in the

	requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14; (…)"

E. Crop Eradication and Alternative Development

1988 Drug Convention	Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), http://www.unodc.org/pdf/convention_1988_en.pdf Art. 14: "Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances. (…) 2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment. (…)"
UNGASS Special Session on the World Drug Problem (1998)	Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, , adopted by the UN General Assembly Special Session in Resolution S-20/4, Measures to enhance international cooperation to counter the world drug problem (1998), http://www.un.org/ga/20special/coop.htm#E Para. 17: "Alternative development is an important component of a balanced and comprehensive drug control strategy and is intended to create a supportive environment for the implementation of that strategy. It is intended to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty. (…)" Para. 18: " Alternative development programmes and international cooperation for that purpose should: (a) Be adapted to the specific legal, social, economic, ecological and cultural conditions prevalent in a given project region; (b) Contribute to the creation of sustainable social and economic opportunities through integrated rural development, including infrastructure development, that will help to improve the living conditions of the communities and population groups affected by the existence of illicit cultivation; (c) Contribute to the promotion of democratic values to encourage community participation, and promote social responsibility to develop a civic culture that rejects the illicit cultivation of crops; (d) Include appropriate demand reduction measures where there is drug abuse in the targeted communities; (e) Incorporate the gender dimension by ensuring equal conditions for women and men to participate in the development process, including design and implementation;

	(f) Observe environmental sustainability criteria, taking into account the objectives of Agenda 21. Programmes and projects of alternative development are efficient instruments used to avoid any expansion or displacement of illicit cultivation to ecologically fragile areas."
Declaration on the Rights of Indigenous Peoples	United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly Resolution 61/295, A/RES/61/295, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf Art. 11: "1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. (…)" Art. 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." Art. 20: "1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress." Art. 21: "(…) 2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. (…)" Article 31 "1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. (…)" Art. 32: "1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

	3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact."
UNODC's Global Thematic Evaluation	Alternative Development: A Global Thematic Evaluation (UNODC 2005), http://www.unodc.org/documents/alternative-development/05-82516_Ebook.pdf
Open-Ended Intergovernmental Expert Working Group	Key points identified by EU experts to be included in the conclusion of the open-ended intergovernmental expert working group on international cooperation on the eradication of illicit drug and on alternative development, UNODC/CND/2008/WG.3/CRP.4, http://www.ungassondrugs.org/images/stories/UNODC_CND2008WG3_CRP4.pdf p. 2-3: "This will require Member States to: (…) - Do not make development assistance conditional on reductions in illicit drug crop cultivation." Note by the Secretariat on the 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, UNODC/CND/2008/WG.3/2, http://www.unodc.org/unodc/en/commissions/UNGASS/04-OEI-EWG3-IllicitDrugCrops-2-4Jul-2008.html Para. 23: "The working group may wish to consider the following proposed recommendations for action by international agencies: (…) (b) Mainstream counter-narcotics and alternative development approaches into the broader development agenda. The development community, in particular the international financial institutions, must incorporate counter-narcotics approaches into their wider development agendas; and the counter-narcotics community must include development approaches in its plans and strategies; (…)"
ECOSOC Resolution 2008/26	ECOSOC Resolution 2008/26 on Promoting sustainability in alternative development as an important part of drug control strategy in States where illicit crops are grown to produce drugs, http://www.un.org/ecosoc/docs/2008/Resolution 2008-26.pdf Para. 1: "*Recalls* the Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, which continues to have practical relevance and in which it is stated that alternative development is an important component of a balanced and comprehensive illicit crop eradication strategy and is intended to promote lawful and sustainable socio-economic options for those communities and population groups that have resorted to illicit cultivation as their only viable means of obtaining a livelihood, contributing in an integrated way to the eradication of poverty;"

	"Annex Best practices and lessons learned in sustainable alternative livelihood development of Thailand 1. First and foremost, alternative development, which in the context of the Thai experience is referred to as "sustainable alternative livelihood development", must be people-centred. (…) 2. The main objective of sustainable alternative livelihood development is to transform poor and vulnerable communities, especially in rural areas, from social and economic dependency or sub-sufficiency to full socio-economic sufficiency, in a participatory manner and at a pace appropriate to each stage, to allow the changes to be accepted and introduced by the communities. (…) 4. When applying sustainable alternative livelihood development in the context of drug control, the eradication of illicit crops should not be the only immediate goal. The progressive introduction of viable alternative livelihoods in the broader context of rural development is needed to tackle the root cause of illicit crop cultivation — poverty — without severely curtailing the only available means of survival of the people involved. (…)"
UN Committee on the Rights of the Child	UN Committee on the Rights of the Child, 'Concluding observations: Colombia', (8 June 2006) UN Doc No CRC/C/COL/CO/3, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.COL.CO.3.En?Opendocument Para. 72: The Committee on the Rights of the Child noted it was "concerned about environmental health problems arising from the usage of the substance glyphosate in aerial fumigation campaigns against coca plantations (which form part of Plan Colombia), as these affect the health of vulnerable groups, including children". Para. 73: The Committee recommended "that [Colombia] carry out independent, rights-based environmental and social-impact assessments of the sprayings in different regions of the country and ensure that, when affected, prior consultation is carried out with indigenous communities and that all precautions be taken to avoid harmful impact of the health of children."
Special Rapporteur on the Right to Health	P Hunt, Oral Remarks to the Press, Friday 21 September 2007, Bogota, Colombia (21 September 2007), http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2007/ruedadeprensaingles.pdf The UN Special Rapporteur on the Right to Health raised concerns in 2007 about the impact of aerial crop eradication activities along the Colombia/Ecuador border. In "looking at this issue through the prism of the right to health", the Special Rapporteur recommended that the aerial spraying of glyphosate by the Colombian government should

	be discontinued as the activity "jeopardise[d] the enjoyment of the right to health in Ecuador", as well as damaging the physical and mental health of people living in Ecuador. According to the Special Rapporteur, "[i]t is imperative that when considering this very important issue the human right to health – at root, the well-being of disadvantaged individuals and communities – is placed at the centre of all decision-making."