

GUIDANCE NOTE FOR UNODC STAFF

PROMOTION AND PROTECTION OF HUMAN RIGHTS

2011

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PURPOSE OF THE GUIDANCE NOTE

The Charter of the United Nations includes an obligation to promote universal respect and observance for human rights. Resolution 51/12 of the Commission on Narcotic Drugs reaffirmed the importance of countering the world drug problem in a multilateral setting with full respect for all human rights and fundamental freedoms, and requested the United Nations Office on Drugs and Crime to work closely with the United Nations human rights agencies in this endeavour. In his subsequent Note to the governing bodies of UNODC in 2010 entitled *Drug control, crime prevention and criminal justice: A human rights perspective*, the Executive Director indicated a way forward to further mainstreaming of human rights in the work of the Office. In July 2011, the Secretary-General endorsed a “Human Rights Due Diligence Policy for UN support to non-UN security forces (HRDDP)”, which seeks to implement obligations under international humanitarian, human rights law and refugee law.

Building on this foundation, this Guidance Note is intended to provide practical assistance to UNODC staff for the promotion and protection of human rights in the work of the Office. The Note will therefore:

- Describe human rights and their relevance to the work of UNODC
- Set out the responsibilities of UNODC with respect to human rights
- Draw attention to particular human rights challenges that may arise in the implementation of UNODC mandates and to propose solutions
- Provide guidance on how human rights should be further integrated into the UNODC programming cycle

In line with this purpose, the Guidance Note is divided into three main sections:

- A background section introducing international human rights law and the relevance of human rights to the work of UNODC
- A conceptual section examining the human rights responsibilities of UNODC as a part of the wider United Nations system
- A practical section outlining how human rights can be integrated into UNODC programming in practice

This Guidance Note is aimed at all UNODC staff and managers, regardless of their specific function. Since human rights concerns often arise at field level, however, it has a particular relevance for those who work in the development, delivery, and evaluation of technical assistance programmes.

BACKGROUND

Human rights in the UN system

Human rights are at the core of all work of the UN system and – together with *peace and security* and *development* – represent one of the three, interlinked and mutually reinforcing, pillars of the United Nations enshrined in the Charter. UNODC is in the unique position of working across all three pillars in its efforts against crime, drugs and terrorism and in supporting Member States to deliver a safe society founded on the rule of law. A key component of UNODC’s work on the rule of law is its specific mandate to guard and protect the United Nations standards and norms in crime prevention and criminal justice. These standards are further explained in the box on page 3.

Bearing in mind the centrality of human rights to the aims of the United Nations organisation and to the work of UNODC, the Office should maximise the positive human rights impact of its work, and always take the human rights perspective into account while planning our programmes. As expressed in the purpose of this guidance, this Note aims to describe how a human rights based approach can be applied in the work of UNODC, including in UNODC regional programmes.

What are human rights?

Human rights constitute a set of rights and duties necessary for the protection of human dignity, inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everyone is equally entitled to human rights without discrimination. As such, human rights are universal, interrelated, interdependent and indivisible and constitute the basis of the concepts of peace, security and development.

Customary international and treaty Law

Universal human rights are often expressed and guaranteed by law in the form of treaties, customary international law, general principles and other sources of international law. Human rights law lays down *rights* (and sometimes duties) for individuals, and corresponding *obligations* - both positive and negative (that is, things *to do* and things *not to do*) – for governments in order to promote and protect the human rights and fundamental freedoms of individuals or groups. The range of human rights contained in international law cover almost every aspect of individual and community life, from civil and political rights, to economic, social, cultural and developmental rights. Some of these rights may be limited by states on grounds such as public safety, order, health, morals and the rights and freedoms of others, whilst other rights may not be limited under any circumstances.

From a legal perspective, human rights contained in customary international law are binding on all states. The scope and content of the customary international law of human rights is (as all of customary international law) an evolving concept. A number of the provisions of the Universal Declaration of Human Rights of 1948 (UDHR) are recognized as having achieved the status of customary international law. The prohibition on torture, genocide and slavery, as well as the principle of non-discrimination, for example, may safely be considered to constitute customary international law. The UDHR and the United Nations Charter were among the first documents at international level to formalize historical concepts of rights that are inherent to many legal systems.

The UDHR was also the predecessor to international human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, these three documents make up the 'International Bill of Rights'. Unlike customary international law, human rights obligations contained in treaties are binding only upon *ratification* or *accession*. Ratification is the process by which a state expresses its consent to be bound by a treaty it has already signed. Accession is the method by which a state becomes a party to a treaty it has not signed. For international human rights conventions or treaties, signature alone is insufficient to create binding obligations, though the Vienna Convention on the Law of Treaties requires a signatory not to take action that would defeat the object or purpose of the signed treaty.

Human rights treaties exist at the *global* and *regional* level. Where a state has ratified both an *international* and a *regional* treaty, such as the American Convention on Human Rights, it is bound by both sets of obligations at the same time. Aside from those rights assumed under customary international law, the particular human rights legal obligations of an individual state therefore depend upon the relevant treaties it has ratified. International human rights conventions or treaties apply only when a convention or treaty is 'in force' (usually following the attainment of a particular number of States parties) and only to those countries that have ratified or acceded to the particular convention or treaty.

There are two important ways in which obligations may be modified or suspended. A State party may make specific *reservations* on ratification, or when a public emergency that threatens the life of the nation arises, may *derogate* from a number of rights. Certain rights, however, such as the right to life, are non-derogable, and they apply in *all* situations.

Regional and Global Core Human Rights Treaties



Human rights and Security Council Resolutions

Human rights matters may be dealt with by the Security Council in the context of resolutions on general issues (such as Security Council resolution 1325 on women, peace and security) or with reference to situations in specific countries (such as resolution 1556 prohibiting supply of weapons to non-governmental entities and individuals in Darfur, Sudan). Security Council resolutions have a legally binding force when they are adopted under Chapter VII of the United Nations Charter in response to a threat to peace, breach of peace or act of aggression. The practice of the Security Council shows that severe human rights violations in one country may pose such a threat to the peace and merit action by the Council. In such cases, the factual and legal findings of the Security Council are also binding for UN agencies. Some resolutions may specifically call upon UN agencies to take certain action or to refrain from taking action in regards to a particular country.

Other human rights sources

Human rights standards can also be found in the form of declarations, principles, standards and recommendations, including those issued by United Nations bodies such as the General Assembly and the Human Rights Council. Such instruments have, in general, no binding legal effect but have an undeniable moral force and provide practical guidance to states. They do, however, have the advantage of applying equally to all United Nations Member States.

Human rights monitoring

In addition to such instruments, interpretation of the content of core treaty-based rights can be found in the work of the monitoring bodies responsible for overseeing treaty implementation. These may be in the form of courts, such as the European or Inter-American Court of Human Rights, or committees of independent experts, such as the United Nations Human Rights Committee and the United Nations Committee on the Rights of the Child. Monitoring bodies may deal with individual complaints of violation of rights and/or produce observations on the degree of implementation by States parties to a particular human rights treaty through a regular reporting and monitoring system. Finally, both human rights guidance and legal obligations may also be found in resolutions adopted by the United Nations Security Council.

Which human rights are relevant to UNODC?

Given the range of international human rights standards, the exact intersections between UNODC drug control, crime prevention, and criminal justice mandates and relevant human rights obligations and standards are not always immediately apparent or simple to identify. A large number of rights contained in the international human rights treaties are also cross-cutting and relevant to several UNODC mandates. Relevant human rights standards are set out for the broad areas of law enforcement, criminal justice, health and human development in Annex 2 of this note, which provides a guide to the content of certain key rights and obligations. A number of rights – such as the rights to non-discrimination and the rights of women and children – which may be considered as cross-cutting the work of UNODC are also detailed in Annex 2. Annex 3 contains treaty and document references for relevant human rights by thematic area and constitutes a ‘quick reference’ guide to those rights that are relevant to UNODC.

WHAT ARE THE HUMAN RIGHTS RELATED RESPONSIBILITIES OF UNODC?

International human rights are best viewed as claims of the individual. The primary obligation for meeting these claims lies with the relevant state. States ratify international human rights treaties and states are the primary subjects of international law in general. Depending upon the nature of the particular right in question, the state obligation usually has a number of elements. These elements are often viewed as obligations on the state to:

- **Respect** rights (to avoid violating rights)
- **Protect** rights (to prevent others from violating rights)
- **Fulfil** rights (to provide positive assistance or services necessary for the claims of the individual to be met)

The United Nations Standards and Norms on Crime Prevention and Criminal Justice

The United Nations standards and norms are contained in resolutions of the General Assembly, the Commission on Human Rights, the Economic and Social Council, the Commission on Crime Prevention and Criminal Justice, and in outcome texts of the United Nations conferences such as the United Nations congress on Crime Prevention and Criminal Justice. UNODC has a particular role to play in supporting states to implement the UN standards and norms on crime prevention and criminal justice, which contain internationally recognized normative principles and standards in crime prevention and criminal justice developed by the international community in the last fifty-one years, covering a wide variety of issues such as juvenile justice, the treatment of offenders, international cooperation, good governance, victim protection and violence against women.

The standards and norms provide a collective vision of how criminal justice system should be structured and have helped to significantly promote more effective and fair criminal justice structures. Some of the “old” standards and norms later developed into fully legally-binding human rights instruments (e.g. the Convention against Torture). Others themselves represent a further development of rights already recognized in human rights treaties (e.g. the UN Guidelines on Justice in matters involving child victims and witnesses, based on the Convention on the Rights of the Child).

The standards and norms may be clustered into four groups:

- standards and norms related primarily to persons in custody, non-custodial sanctions, juvenile justice and restorative justice;
- standards and norms related primarily to legal, institutional and practical arrangements for international cooperation;
- standards and norms related primarily to crime prevention and victim issues; and
- standards and norms related primarily to good governance, the independence of the judiciary and the integrity of criminal justice personnel.

If human rights are primarily claims of the individual against corresponding obligations of the state, what can be said about the human rights responsibilities of United Nations entities such as UNODC? Article 1 of the United Nations Charter provides that one of the *purposes* of the United Nations is to ‘promote and encourage respect for human rights and for fundamental freedoms’. In addition, Article 55 of the Charter places a specific *responsibility* on the United Nations *to promote human rights*:

The United Nations **shall promote...** universal respect for and observance of, **human rights** and **fundamental freedoms** for all

Guidance on what this responsibility means in practice can be found in documents such as the 2005 World Summit Outcome, in which Member States resolved that the promotion and protection of human rights should be both *integrated into national policies* and *mainstreamed* throughout the United Nations system. ‘Mainstreaming’ of the Charter responsibility to *promote* human rights implies that *all* actions of UNODC, including programming and technical assistance should take every opportunity to further the realization of human rights.

In addition to the promotion of rights, the World Summit Outcome also refers to the *protection* of rights. At a minimum, this must include a responsibility for international organisations to *respect* rights by ensuring that they themselves do no harm from a human rights perspective. As such, a duty of diligence arises to make certain that the policies and actions (or inactions) of UNODC do not undermine the human rights of individuals or the human rights obligations of states. Indeed, UNODC mandates on drugs, terrorism and criminal justice themselves reaffirm the importance of full respect for human rights.

The United Nations Charter and the 2005 World Summit Outcome imply responsibilities for UNODC to:

- **Promote** human rights (in all actions)
- **Respect** human rights (do no harm)
- **Protect** human rights (within mandates)

This, however, is the *minimum* component of the responsibility to protect human rights. During the delivery of technical assistance and in dealings with governments, UNODC may encounter denials of rights due to a failure of the state to meet one or more of its human rights obligations. In such circumstances, UNODC has a responsibility to act within the context of its operations and mandates, related to the international conventions on narcotic drugs and organized crime, including action as part of the United Nations country team or action at the political level.

With respect to all of these responsibilities, it is important that UNODC is able to find the right balance between ensuring that all activities of the Office promote, respect and protect human rights standards, and the broader perspective of remaining engaged with countries through the delivery of technical support that can bring about positive change. Such support is necessary both to fulfill the mandates given to UNODC by the international community through its governing bodies and, ultimately, to improve the lives of those the Office aims to serve.

Promoting Human Rights

A key element of ‘mainstreaming’ the *promotion* of human rights is the adoption of a human rights based approach to development cooperation and technical assistance programming. Guidance on applying a human rights based approach is found in the ‘United Nations Agencies Statement of Common Understanding on the Human Rights Based Approach to Development Cooperation’. Most UN agencies have a clear policy on human rights mainstreaming based on the Common Understanding Statement.

The Common Understanding Statement proposes:

- **A GOAL:** All programmes of development cooperation, policies and technical assistance should further the realization of human rights
- **A PROCESS:** Human rights standards and principles should guide all development cooperation and programming in all sectors and in all phases of the programming process
- **AN OUTCOME:** Development cooperation should contribute to the development of the capacities of states to meet their obligations and/or of individuals to claim their rights

A human rights based approach implies a conscious and systematic integration of human rights and human rights principles in all aspects of programming work. In particular, a human rights based approach should include a focus in programming on the promotion of equality and non-discrimination, ensuring the participation and inclusion of disadvantaged groups, and strengthening of state accountability concerning its human rights obligations.

At all stages of the programme cycle and for all programmes, the overall *aim* should be enhancing service delivery by UNODC, through the strengthening of state capacity to ensure relevant human rights in the areas of justice, security and health. In practice, this means considering all programming actions not only from the perspective of the immediate project or programme goals, but also from the perspective of whether actions improve state human rights capacity, observance and fulfillment.

In many cases, human rights challenges themselves likely form part of the *underlying causes* of the security, justice and health concerns that UNODC endeavours to address. As such, incorporation of a rights based approach should not be seen as a ‘bolt-on extra’, but rather as an integral part of technical assistance, including from the problem-identification stage. Actions that could promote human rights are often *already* a part of UNODC technical assistance. They may simply require fine-tuning or adjustment in order to maximize their positive effect on human rights realization. The table in Annex 1 provides a non-exhaustive list of specific examples of situations where UNODC could *promote* the realization of human rights in its programming.

...the overall aim should be a shifting development from **simple service delivery** by UNODC, to the parallel strengthening of the **capacities of states** to meet **human rights obligations** and/or of individuals to claim rights

Respecting Human Rights – ‘Doing No Harm’

Whilst UNODC technical assistance offers many opportunities for a positive impact and the promotion of human rights, particularly through the promotion of the drug control and other relevant conventions and standards and norms, there is a small, but ever-present, risk that UNODC activities could have a *negative* impact on human rights. If UNODC technical assistance activities are designed from the outset to *promote* rights then the chances that this may occur are small. As set out in this note however, UNODC has a duty of diligence to make certain that its policies and actions (or inactions) do not undermine the human rights of individuals or the human rights obligations of states.

At the most extreme end of the spectrum, actions of international organisations may occasionally lead *directly* to denial of human rights. This includes cases where international civil servants engage in criminal or unethical behaviour in the host country. It could also occur where technical assistance programmes are ill-designed and take no account of human rights standards: for example, if UNODC were to support a state in drafting articles of a new law that were incompatible with human rights and other relevant international conventions. The duty of diligence means that UNODC projects and programmes must never purposefully or inadvertently lead to such results.

The importance of ensuring that UN activities do not aid or assist human rights violations has recently been highlighted at UN system level through the endorsement by the Secretary-General in July 2011 of a ‘Human Rights Due Diligence Policy on UN support to non-UN security forces’ (HRDDP). This policy provides that UN support cannot be provided where there are substantial grounds for believing that there is a *real risk* of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. The policy applies to support provided to national military, paramilitary, police, intelligence services, border-control and similar security forces, as well as the authorities responsible for the management, administration or command or control of such forces.

The HRDDP focuses on UN support to non-UN security forces, and it provides an important precedent for the process of risk assessment and implementation of technical support in a manner consistent with the human rights responsibilities of the United Nations. Relevant provisions of the HRDDP are referred to throughout this Note.

Identifying potential human rights problems

As noted above, in all cases, the response of UNODC to human rights risk must find the right balance between ensuring respect for human rights whilst remaining engaged with countries through the delivery of technical support that can bring about positive change. A key starting point for this balance is to first understand the full human rights *context and implications* of UNODC policies and actions in all dealings with states and other organisations. This includes recognizing those situations in which activities funded by the organisation risk being misused by states and hence indirectly aiding or assisting in human rights abuses.

The HRDDP specifies that, before engaging in support, a UN entity must conduct an *assessment* of the potential risks and benefits involved in providing support. Such an assessment must include consideration of the human rights *record* of the intended recipient of support and the adequacy of existing *measures* in place to prevent human rights violations. The following sections of this Note examine how such an assessment may be carried out in practice.

The identification of human rights concerns at UNODC project or programme planning stage may not always be straightforward. Human rights concerns may arise later during programme implementation, and financial or other pressures may be intense to work with a particular state institution in an area that is close to human rights concerns. Clear rules and ‘bright lines’ not to be crossed are, as such, elusive. Nonetheless, basic principles for determining when UNODC assistance may indirectly aid or assist in human rights violations include the *nature* of the UNODC connection, interaction, or technical support and its *closeness* to a sustained pattern of human rights violations.

Not every connection between an international organisation and a government institution engaged in human rights violations will result in complicity of the organisation. Some technical support programmes will be able to operate where sufficient safeguards and controls are in place. However, the general principle holds that increased duration, frequency, or intensity of the connection with, or technical support to, a government institution responsible for human rights violations represents an increased risk. Where a *financial relationship* exists between an international organisation and a government institution responsible for human rights violations, the risk of aid or assistance to those violations may become particularly significant.

UNODC funding partners are increasingly asking the Office to specifically demonstrate that envisaged technical assistance activities do not carry a risk of aiding or supporting human rights abuses. Including the outcome of a human rights analysis in funding applications is a clear way of demonstrating to funding partners that proposed activities will meet such requirements. Where the analysis reveals some degree of risk, the funding proposal should also include information on the risk mitigation strategy and planned responses.

Responding to potential human rights problems

Where state partner institutions are implicated in human rights abuses but are nonetheless willing to engage openly and constructively on human rights issues, UNODC engagement will likely represent an opportunity rather than a challenge. Under its responsibility to promote human rights, UNODC may have the opportunity to incorporate specific activities into technical assistance programmes that are aimed at addressing the human rights situation.

However, in the often sensitive area of human rights, drugs, crime, and terrorism, not all counterparts may be immediately receptive to a human rights based approach to programming. As the large number of international human rights standards for law enforcement and criminal justice demonstrates, government actions within the state criminal justice system too often represent one of the greatest challenges to the enjoyment of human rights. In contexts where state counterparts are *not receptive* to addressing human rights concerns raised by the Office, UNODC must carefully consider the implications for UNODC activities together with possible degrees of response to the concerns.

Human rights concerns *do not mean* that *complete* disengagement is an option, except in particular cases where the United Nations system as a whole has taken such a stance for specific reasons. Indeed, UNODC engagement where country commitment to human rights is in doubt may still be highly productive and in line with its responsibility to promote human rights. UNODC may often do well to engage difficult issues rather than to stick to safe programmes without political risk. Strong UNODC efforts can help change a demanding human rights situation. Such decisions, however, need to be taken by UNODC senior management with reference to the level of risk balanced against the potential for UNODC to improve the human rights situation and in-line with the wider UN position on specific country situations.

Nevertheless, where a state persists in deliberate violation of human rights and is unwilling to engage openly on the issue, continued UNODC involvement in such a situation may begin to cross the threshold over which UNODC fails in its responsibility to respect human rights. Such situations will require immediate mitigatory action.

This part of the Guidance Note sets out actions that UNODC may take in full consultation with the wider United Nations system, normally together with the UN country team, where a risk of aid or assistance to human rights violations is identified. The boxes on the following pages address specific situations that may raise particular human rights concerns in the areas of terrorism prevention, the criminal justice response, compulsory drug treatment centers, and the use of the death penalty (in relation to UNODC support to the criminal justice system).

...UNODC work and decisions in respect of human rights should be taken in **full conformity and cooperation with UN system wide priorities, guidelines and decisions**

More generally, the table below presents a range of possible response actions that could be taken where human rights concerns arise. It is not intended to provide exhaustive examples, or even to suggest that the course of action for each example would be correct in *all* circumstances. Indeed, as important as the possible response action, is the *process* by which response decisions are taken. From an internal UNODC perspective, wherever a planned or ongoing programme is identified to carry human rights risk, this should always be reported to senior management (Divisional Director and Regional Representative level). Senior management should consult with OHCHR and are responsible for confirming the assessment of the perceived level of risk and the proposed appropriate response. Indeed, as important as the possible response actions, is the process by which response decisions are taken. In particular, UNODC responses to human rights concerns should be fully coordinated with the OHCHR, the UN country team and other UN agencies and stakeholders.

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| Complementary activities | <p>Complementary activities are those which directly address the potential human rights risk by supporting relevant protective mechanisms. Where the risk of aid or assistance to state human rights violations is judged to be comparatively low, it may be sufficient to 'counterbalance' support to the at-risk activity with complementary activities. For example, if there is a small risk that staff at UNODC-supported institutions for children in conflict with the law may engage in violence or abusive behaviour, UNODC may choose to also support a separate, independent inspection office. Similarly, where UNODC offers support to special anti-organized crime prosecutors, it may at the same time support the public defender's office in order to ensure that accused persons receive a defence in line with international standards. Complementary activities must be planned for and built in at the initial programme design stage in line with a human rights based approach to the whole programme cycle.</p> |
| Activity safeguards | <p>Safeguards are specific mechanisms that monitor for a certain event, upon which a particular course of action is engaged. For example, if there is a risk that drug dependence, treatment and care centres supported by UNODC may be used by government authorities to deliver treatment on a compulsory basis, an appropriate safeguard would be the monitoring of the background of referrals to the centre on an ongoing basis. The technical support agreement would specify that the centre notify UNODC wherever incoming referrals are made on a compulsory basis. UNODC would then be able to address the issue directly with government authorities,</p> |
| State undertakings | <p>State undertakings on human rights issues may be sought in relation to the provision of technical support. For example, where there is a risk that personal information generated from a UNODC-supported financial intelligence unit may be shared in breach of right to privacy protections, a specific undertaking could be obtained from government authorities concerning the protection of personal information. Such an undertaking could be included at the programme document stage or during implementation. Where such undertakings are considered politically sensitive, they should only be included in consultation with UNODC senior management. Undertakings may best be phrased in positive language (<i>'the financial intelligence unit shall...'</i>, rather than <i>'shall not'</i>). Breach of such undertakings by counterparts should constitute a breach of the programme document rights and obligations.</p> |
| Political intervention | <p>Intervention with government counterparts may be sought at a political level through UNODC headquarters and/or the United Nations country Resident Coordinator system This can be done when the risk of aid or assistance to human rights violations is significant. For example, where (despite the possible presence of safeguards) a UNODC-supported court system begins issuing disproportionate penal sentences to drug-dependent users for personal possession offences, an appropriate initial response may be a letter from the Office to the Minister of Justice drawing attention to relevant international human rights standards. In this respect, the HRDDP specifically provides that 'if the United Nations receives reliable information that provides substantial grounds for believing that a recipient of UN support is committing grave violations of international humanitarian, human rights or refugee law, the UN entity providing support should bring these grounds to the attention of the relevant national authorities with a view to bringing those violations to an end.'</p> |
| Temporary freeze | <p>A temporary freeze on specific at-risk activities may be necessary in serious cases of human rights violations. If a UNODC programme is effectively aiding or assisting a serious human rights violation, a temporary freeze pending resolution of the situation may, following discussions with actors such as OHCHR, other members of the UN country team, and the UN resident coordinator, be appropriate. Such steps would require the authorization of UNODC senior management and may only be taken where other measures have failed. Such a course of action would be consistent with the HRDDP, which specifies: 'If, despite intercession by the UN entity concerned, the United Nations receives reliable information that provides substantial grounds to suspect that the recipient entity is continuing to engage in grave violations of international humanitarian, human rights or refugee law, then the UN entity must <i>suspend</i> or withdraw support from the recipient'.</p> |
| Withdrawal of support | <p>Where a UNODC programme is undeniably aiding or assisting a serious, ongoing human rights violation, the responsibility of UNODC to respect human rights may require withdrawal of the particular support offered by that particular programme. Withdrawal of support is a <i>last resort</i> possibility and can only be a high-level decision, following full discussion and consultation with the wider UN system. This course of action would only be taken where there was no indication that the government counterpart was prepared to address the violation following the raising of concerns by UNODC through HQ intervention and through the United Nations Resident Coordinator and possible temporary freezes on support. Withdrawal of support need only be in respect of those activities that aid or assist the human rights violation. Other UNODC programmes of support in the country may, if possible, continue.</p> |

Protecting Human Rights through UNODC Operations and Mandates

The responsibility to *protect* human rights is engaged where UNODC encounters denials of rights within the sphere of UNODC technical assistance and its relations with governments that do not present a risk of UNODC complicity in human rights violations, but where UNODC may nonetheless be able to take positive action.

With its expertise in the areas of the rule of law, crime prevention and criminal justice, and drug prevention, treatment and care, UNODC has the potential to significantly contribute to enhancing challenging human rights situations. Where appropriate, a UNODC country presence may be able to use contacts with relevant counterparts to draw attention to relevant international standards, such as the Basic Principles on the Role of Lawyers and the International Convention on the Protection of All Persons from Enforced Disappearance. UNODC may also point to provisions in UNCAC and UNTOC relating to the protection of witnesses and provide support to the judiciary, prosecutors, defence counsel or law enforcement in implementing procedural and non-procedural protection measures.

In some contexts, concern is often expressed over a perceived 'tension' between effective aid delivery and the 'monitoring and reporting' of human rights violations. This apprehension is frequently overstated. Whilst the maintenance of effective working relationships with government counterparts is important, technical assistance cannot be delivered in a vacuum that is divorced from the wider human rights and rule of law context. Protection of human rights need not involve public denunciation of abuses. Rather, through constructive and open dialogue with government counterparts, human rights protection may be achieved alongside the delivery of technical assistance. Indeed, effective support for the rule of law requires both the willingness to partner and the willingness to be clear and bold on international human rights law and standards. From a practical perspective, human rights protection issues should most usually be addressed in coordination with OHCHR and the UN Resident Coordinator system.

CRIMINAL JUSTICE REFORM

UNODC programming in the area of criminal justice is based upon the United Nations standards and norms in crime prevention and criminal justice. This box examines a number of examples which raise particular human rights issues within the area of criminal justice reform.

UNODC was recently asked, for instance, to provide assistance in the form of legislative drafting to include traditional justice mechanisms in the legal system. Such mechanisms, which are part of a wider category of 'informal justice systems', may risk applying practices that are discriminatory to women and children, and in violation of other human rights (for example, by applying corporal punishment). They may also lack effective oversight and monitoring. The question in such cases is whether to disengage from the process completely in light of possible human rights violations, or to participate while insisting on certain safeguards. In at least one such context, It was decided to engage with caution in order to be able to influence the process and with the aim of introducing certain human rights standards.

With respect to the formal justice section, particular issues may arise around the development and application of specialized laws concerning organized crime and corruption that are sometimes viewed as shifting the burden of proof to the defendant, such as in the case of illicit enrichment. Such laws and practices do not necessarily violate the presumption of innocence if they are defined in law, reasonably limited, and the statutory presumption is capable of being rebutted by the accused. Legal codes may not however define a criminal offence based on mere suspicion or association which results in a presumption of guilt as the starting point at trial. In seeking to provide legal tools to combat organized crime and corruption, UNODC legal advisors should ensure that they do not inadvertently support provisions that are incompatible with the right to fair trial.

Similarly, the impact of prosecution or trial support projects cannot be viewed in isolation from conviction outcomes. UNODC prosecution or trial support should avoid directly or indirectly contributing to increased overcrowding in prisons, or to the sentencing of persons to detention in conditions incompatible with the Standard Minimum Rules for the Treatment of Prisoners. Wherever possible, UNODC programming should aim to comprehensively support the entire criminal justice and corrections chain.

PRACTICAL STEPS

The UNODC Programme Cycle

A core proposition of the human rights based approach is that the realization of human rights is the ultimate goal of all development programs. Planning for maximization of human rights realization should therefore begin from the very conception, or strategy setting, of programme activities, whether at the national, regional or global level. Detailed information on the human rights context and challenges, and the expected human rights impact of the planned programme should be used during programme development and resource mobilization. Continuous monitoring of the human rights situation and impact should occur during programme implementation, and human rights standards should form an integral part of programme evaluation.

Programme Strategy, Development and Resource Mobilisation

At the strategy setting and planning stage, it is important to commence with a human rights information gathering exercise:

- What are the country's international human rights obligations?
- What are the main human rights concerns in the areas of justice, security and health?
- What is the level of government human rights commitment and capacity? How active are civil society organisations on human rights issues?

Source information for this exercise should include the concluding observations of United Nations human rights treaty bodies, as well as thematic and country reports of United Nations Special Rapporteurs of the Human Rights Council, and reports and recommendations of the human rights Universal Periodic Review Process.

In this respect, documents of the United Nations human rights may be accessed at www.universalhumanrightsindex.org. Ratification status for human rights treaties can be accessed at <http://treaties.un.org> or <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>. OHCHR field presences should also be consulted for the latest information at country or regional-level. In addition, reports of national civil society organisations and international non-governmental organisations such as Amnesty International, Human Rights Watch, Minority Rights

USE OF THE DEATH PENALTY

For states that are not party to the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the imposition of the death penalty *per se* is not prohibited by international law. The ICCPR itself however limits it to use only for the '*most serious crimes*'. These are widely interpreted as intentional crimes with lethal or other extremely grave consequences.

States that retain the death penalty should apply the Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Res 1984/50). The Safeguards also list a number of *due process* guarantees which must be respected in any case where the death penalty is sought.

In 2007, the General Assembly adopted a resolution (A/RES/62/149) calling upon all States that still maintain the death penalty to, *inter alia*, establish a moratorium on executions with a view to abolishing the death penalty. As a United Nations entity, UNODC advocates the abolition of the death penalty.

In countries that retain the death penalty and are not ready to consider full abolition:

- Insist on the application of Safeguards and identify measures the Government may be willing to adopt, for example: annulling **mandatory** use of the death penalty so that the judiciary are able to look into the specific circumstances of each case, prohibiting application of the death penalty to children (under 18 years old). And reducing the list of crimes to which the death penalty may be applied by limiting it to the **most serious ones**
- Inform the Government of the full human rights implications of use of the death penalty, in particular that imposition of the death penalty is an impediment to international cooperation as many countries are prevented from extraditing accused offenders when the death penalty may be imposed
- In particular, explain the difficulty UNODC has in supporting law enforcement in the area of drug control that may lead to imposition of the death penalty. Contact the country Office of the United Nations High Commissioner for Human Rights in order to coordinate approaches to the government on the issue. Make use of the leverage of donors. The European Parliament, for example, has called on EU Member States to ensure that development assistance does not support, directly or indirectly, use of the death penalty for drug offences.

If, in spite of all of the above, a country actively continues to apply the death penalty for drug offences, UNODC places itself in a very vulnerable position *vis-à-vis* its responsibility to respect human rights if it maintains support to law enforcement units, prosecutors or courts within the criminal justice system. Whether support technically amounts to *aid or assistance* to the human rights violation will depend upon the nature of technical assistance provided and the exact role of the counterpart in arrest, prosecutions and convictions that result in application of the death penalty. Even training of border guards who are responsible for arrest of drug traffickers ultimately sentenced to death may be considered sufficiently *proximate* to the violation to engage international responsibility.

At the very least, continued support in such circumstances can be perceived as legitimizing government actions. If, following requests for guarantees and high-level political intervention, executions for drug-related offences continue, UNODC may have no choice but to employ a temporary freeze or withdrawal of support.

Group, Penal Reform International, the International Federation of Human Rights, and Save the Children should be consulted for additional knowledge of country situations.

In accordance with the human rights based approach to programming, once the relevant human rights challenges have been identified, programme planners must ask themselves:

- Does the planned programme further the realization of rights in the areas of concern identified?
- Does the planned programme contribute to the capacity of national counterparts to promote full compliance with their international human rights obligations?
- Are the planned programme activities proximate to state institutions where human rights concerns exist? Could the planned programme have any negative impact on human rights – such as aiding or assisting human rights violations?

This information must be factored into a situation analysis when defining the concrete interventions that UNODC intends to undertake. In the example on the following page, the link is demonstrated between the underlying human rights issues, immediate causes, and the situation that UNODC ultimately aims to improve.

The programme cycle phases of strategy setting, development and resource mobilization are also when the *human rights risks* of programming should be considered, before implementation begins. As set out in this Note, the HRDDP specifically requires that a human rights *risk assessment* be conducted prior to delivery of support. The HRDDP also specifies that UN agencies put in place an *implementation framework* for ongoing monitoring of the behaviour of a recipient with a view to detecting any human rights violation that may arise *during* delivery of support.

With these aims in mind, a human rights planning tool, to form part of the UNODC Programme and Operations Manual, is currently under development by UNODC. The tool will guide UNODC programme managers through a structured process for identifying those human rights that are relevant to a particular country and programme context and for determining the likely possible human rights outcomes of planned programme activities. Whilst it is important to carry out a human rights analysis *before* commencing implementation of activities, the tool will also be used in monitoring and evaluation in order to confirm that the expected outcome is the same as the actual human rights outcome.

When a risk of UNODC aid or assistance to state human rights violations is suggested by such a process, it is important to formulate a risk mitigation strategy. This should take into account the objective likelihood of actual aid or assistance to human rights violations. The response actions contained at pages 8 and 9 of this note should form an integral part of the risk mitigation strategy, and the strategy should concisely set out the reasons why programme activities should proceed despite the identified human rights risks. The strategy should also be careful to take into account the broader context of United Nations country team work and the ways in which UNODC activities will be coordinated with the efforts of other UN agencies.

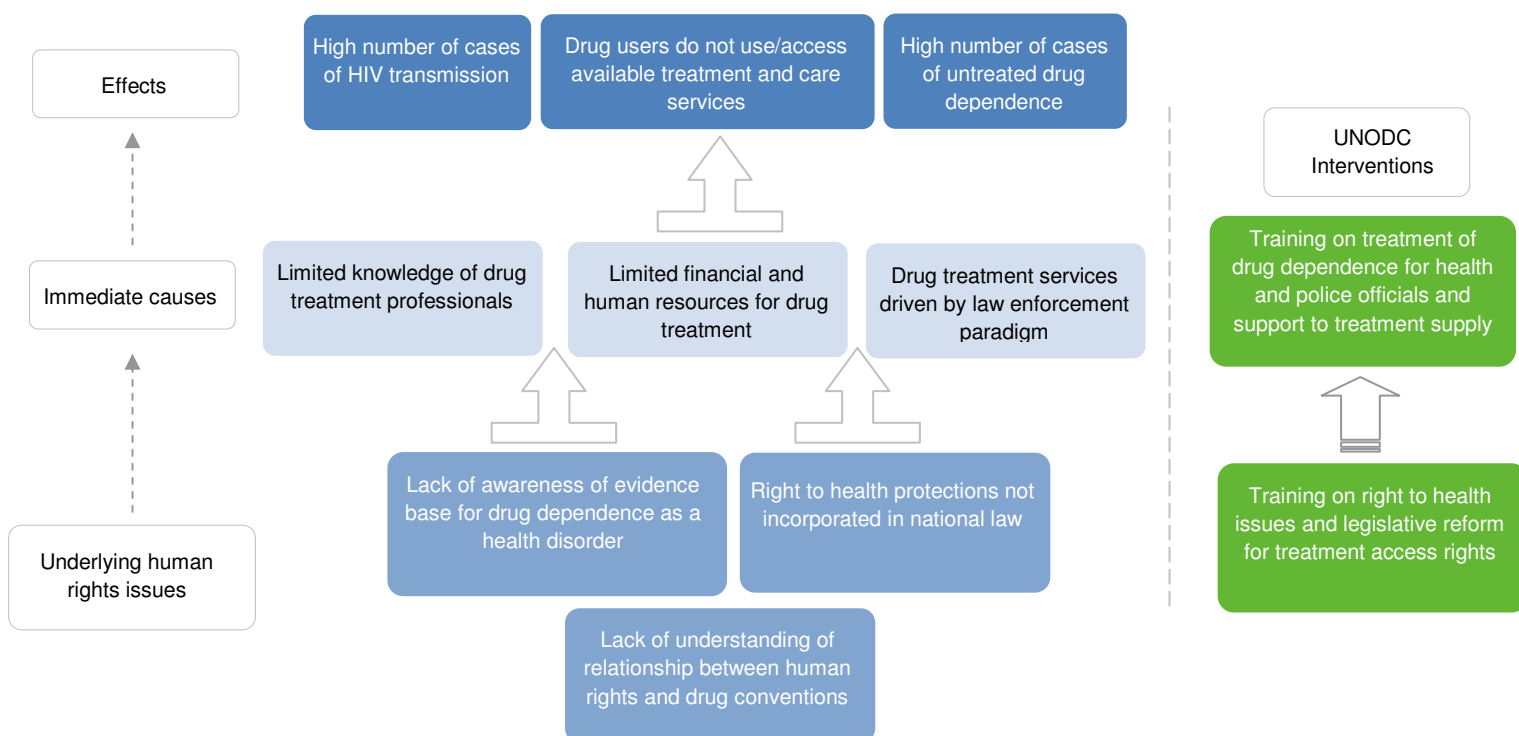
TERRORISM PREVENTION

A number of reports suggest that many states have taken the international call to strengthen their counter-terrorism framework (pursuant to their international obligations under counter-terrorism treaties and under relevant Security Council resolutions) as an opportunity to target political opponents and to restrict human rights without proper justification.

In legislative assistance reform particular care should be devoted to the definition of terrorism-related offences, which ought to be strictly construed. In addition, procedural guarantees are key to a human rights-based response. In the context of combating terrorism, several States have resorted to longer periods of provisional detention, which must be examined through the lenses of applicable human rights law. Incommunicado detention or excessive periods of detention without charge, for example, infringe several human rights guarantees. The use of tainted evidence, or non-disclosure to the defence of incriminating or exculpatory evidence may also infringe on international human rights. The protection against *refoulement* prohibits the expulsion or forced return of persons to states where there are substantial grounds to believe that they would be at risk of torture. Equally, States have an obligation, under the universal counter-terrorism treaties and human rights law, to apply necessary measures without discrimination as to race, religion, nationality, ethnic origin or political opinion.

UNODC experts should be aware of State practices in violation of international human rights standards in the area of terrorism legislation, and are expected to raise such issues when providing legislative assistance, or in capacity-building activities. The Terrorism Prevention Branch consults with other UN entities, in particular the Counter-Terrorism Integrated Task Force (CTITF), the Counter-Terrorism Executive Directorate (CTED) and OHCHR, when programming activities in countries where particular human rights concerns are present.

Example of a human rights-based situational analysis



Programme Implementation and Monitoring

To improve a human rights situation, the implementation of every UNODC project or programme must itself be consistent with human rights principles. This includes ensuring the participation of all relevant stakeholders, including hard-to-reach and minority groups, and being transparent about project progress and results. It also means making certain that the project is implemented in a non-discriminatory way, and that UNODC remains accountable to stakeholders, for example by being responsive to questions or concerns regarding the programme.

In addition to its own actions, UNODC must also ensure that its partners from civil society organisations and the private sector respect human rights principles and have a positive human rights record. This also applies in the procurement process for the selection of suppliers of goods and services to UNODC. The Guidelines on Cooperation between the United Nations and the Business Community provide, for example, that “*business entities that are complicit in human rights abuses, tolerate forced or compulsory labour or the use of child labour... or that otherwise do not meet relevant obligations or responsibilities by the United Nations, are not eligible for partnership.*” In addition to the Guidelines on Cooperation, the United Nations Global Compact ‘Partnership Assessment Tool’ is also a useful tool for assessing the sustainability and development impact of partnerships.

For the majority of human rights which UNODC programmes aim to promote – such as the right to fair trial or the right to liberty and security of person – it should be possible to include specific human rights measurables in the programme monitoring plan. For example, where UNODC supports evidence- and community-based drug dependence treatment facilities and voluntary-based rehabilitation programmes in a country where compulsory treatment and detention approaches are also used, important measures should be taken to ensure that these methods were in no way aided or assisted by UNODC activities in the country.

The area of human rights measurement and indicators is currently under development and there is no one agreed methodology for measuring human rights results. The work done on indicators by OHCHR to date, for example, focuses on indicators as tools for *states* to monitor their own progress in implementing human rights. Nonetheless, certain elements of the approach used by OHCHR in defining indicators are potentially applicable to programme monitoring. The UNODC internal human rights planning tool will take account of developments in this area with a view to setting out relevant measurement suggestions.

Periodic performance reviews (at the project or programme levels) should also include references to human rights related issues. At the level of programme reviews, the Programme Review Committee (PRC) at UNODC will pay specific attention to reporting on any human rights related measures established at programme commencement. The PRC is responsible for vetting all regional, country and thematic programmes and the Committee will also consider programmes in light of emerging regional or thematic human rights, even if the programme documents themselves make no reference to these. This is important in order to ensure that ongoing UNODC programmes systematically recognize and address emerging human challenges. All new operational programs must now contain evidence that the human rights background has been researched, and where appropriate, a human rights analysis has been used to determine the human rights related effects of proposed programmes.

Programme Evaluation

Rights-based evaluation should use both quantitative and qualitative methods. The former can provide information on the human rights impact for particular groups of stakeholders, while the latter can assist in explaining how those results have been achieved. Information from mixed methods can assist in increasing the reliability and validity of an evaluation, as well as being useful for exploring whether or why different stakeholder groups have benefited to different degrees. One important resource for the integration of a human rights perspective in programme evaluation is the United Nations Evaluation Group (UNEG) Handbook for Integrating Human Rights and Gender Equality in Evaluations in the United Nations System.

Evaluations should pay careful attention to which groups have benefited and which groups have contributed to the intervention under review, and whether stakeholders have been able to participate

in the design, implementation and monitoring of the intervention – both from a process and a results perspective. Stakeholder groups should have the opportunity to express their views about what will be evaluated and how the evaluation will be done. The groups should be disaggregated by relevant criteria: disadvantaged and advantaged groups (gender, ethnicity, age, location), duty-bearers and rights-holders, in order to assess whether benefits and contributions have been equitably distributed by the intervention under evaluation. Human rights based planning and implementation aim to increase the capacity of disadvantaged groups to claim their rights. An evaluation should therefore itself be participatory and also examine changes in power relations amongst stakeholders.

COMPULSORY DRUG TREATMENT CENTRES

Many countries provide long-term residential treatment for drug dependence without the consent of the patient that is in reality a type of low security imprisonment. Such centres cannot be considered as an 'alternative' to detention and raise a number of human rights concerns:

Entry to such centres is commonly neither subject to clear due process of law nor based on administrative provisions. Occasional drug users, persons who are drug dependent, sex workers, transgender persons and street children risk arrest and detention in breach of the right to freedom from arbitrary deprivation of liberty. For personal drug use, treatment, education, aftercare, rehabilitation, or social integration can be applied as a complete alternative to conviction and punishment.

Secondly, with respect to *forced detoxification* in centres: The right to informed consent to treatment demands that - apart from in exceptional circumstances - drug dependence treatment must be undertaken *voluntarily*. In addition, the right to health demands that treatment be *evidence-based*, according to *established principles of medicine*. Detoxification alone has not been shown to be effective. Rather, comprehensive drug dependence treatment includes a broad range of evidence-based psychosocial and pharmacological interventions ("From Coercion to Cohesion", UNODC 2010).

Thirdly, with respect to centre *conditions*: Such centres are often implicated in reports of neglect, maltreatment and even torture. Such acts constitute a violation not only of national criminal laws, but also of international human rights law and standards. In addition, a lack of appropriate HIV prevention, treatment and care facilities places those detained at an unacceptably high risk of HIV infection.

Direct UNODC support to any institution in which the above violations are reported places UNODC at an unacceptably high risk of providing aid or assistance to human rights abuses. UNODC must in such cases either work with these institutions to improve the human rights situation, or to consider withdrawal of support.

In countries where such centres are present, UNODC should support government efforts to implement an evidence-base alternative to such centres, including voluntary drug dependence treatment programmes at community level. UNODC should also be clear in a call to the government to end all forms of arbitrary detention and to make available voluntary, low-cost, community-based drug dependence treatment, rehabilitation and reintegration.

IMPLEMENTING THE GUIDANCE

The three main components of the approach of UNODC to human rights are:

- Mainstreaming human rights into programme development, including through the undertaking of human rights analysis during planning and implementation;
- Provision of human rights training for UNODC staff; and
- Strengthening working relations on human rights with OHCHR, UN country offices, UN regional centres and the UN development assistance framework.

In addition to working with sister agencies to develop a system-wide approach to implementing the Secretary General's Human Rights Due Diligence Policy, UNODC is taking the following steps:

- Reviewing Model Laws and relevant UNODC documents to ensure that they respect and include relevant human rights provisions
- Building capacity in field presences and at headquarters on relevant human rights issues, including the United Nations standards and norms on crime prevention and criminal justice.
- Developing a module in the UNODC Programme and Operations Manual for the purposes of human rights planning
- Including human rights background information and expected outcomes in all new regional, country or thematic programmes under development and consulting with OHCHR and other regional organisations as appropriate
- Strengthening links with OHCHR presences at the field level and establishing mechanisms to ensure that UNODC field presences routinely consult with OHCHR on human rights issues as appropriate.

Annex I – Promoting human rights in UNODC programmes

The table is not intended to be prescriptive. Rather, it offers examples of programming that could be used in each situational context by UNODC to strengthen state capacity to meet human rights obligations and/or to assist individuals to claim their rights. Different examples may be particularly applicable in different country and regional contexts and UNODC field presences should also develop their own strategies to meet these challenges. The different challenges and possible responses are presented individually in list form. In reality, however, many are frequently interconnected and derive from underlying structural concerns such as the incompatibility of legislation with human rights standards. It is important that the design of new UNODC programmes is based on an integrated view of law enforcement, criminal justice and health systems in any given country and includes strategies to prevent the creation of imbalances and to promote complementary reform in all sectors.

The table assumes that government counterparts are receptive to a human rights-based approach to programming in the different situational contexts considered. As states are the primary holders of human rights obligations, the success of UNODC action aimed at *promoting* rights depends largely upon productive cooperation with national governments. Indeed, the principles of meaningful participation and accountability require the full support and engagement of government counterparts. In-line with a rights based approach, the promotion of human rights should be routinely considered in all UNODC technical assistance and implemented in accordance with the principles of equality and non-discrimination, participation and accountability.

| UNODC mandate area | Situational context | Possible actions to promote human rights in UNODC programming on the basis of relevant standards and norms in crime prevention and criminal justice and best practices in treatment and care of drug users | |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Law Enforcement: including organized crime and trafficking | Law enforcement officials lack basic skills on use of force and community-based policing | <i>Training component on code of conduct for law enforcement officials and basic principles on community-based policing</i> | <i>Review of internal law enforcement disciplinary system and drafting of conduct rules and secondary legislation</i> |
| | Searches, interrogations and arrests focus on injecting drug users and are not evidence-based | <i>Review of law enforcement operational manuals and training on evidence-based community policing</i> | <i>Support to relevant community-based groups and leaders and awareness raising of non-discrimination rights under national and international law</i> |
| | Arrested persons are detained for long periods without the possibility to challenge the legality of detention | <i>Review of criminal procedure legislation for compliance with international standards</i> | <i>Training of officers responsible for custody on effective use of resources and rights of the accused</i> |
| | Children in conflict with the law are treated as adults | <i>Expert review of juvenile justice law and promotion of pilot projects for diversion in appropriate cases</i> | <i>Appointment of a specialized juvenile justice officer in each police station, including female officers</i> |
| | Alternatives to detention for illicit drug users are not used or are not available | <i>Review of criminal code and training for law enforcement officials on alternative measures</i> <i>Help to obtain the funding for treatment as an alternative to prison</i> | <i>Assessment of why drug users come into contact with police and of level of access to health care</i> |
| | Increased reporting requirements of financial institutions lead to concerns related to the right to privacy | <i>Review of both general and special criminal law and specialized legal assistance to ensure regulatory framework in line with international human rights standards</i> | <i>Support police reform processes focusing in oversight, accountability and service delivery</i> |
| | Reports that law enforcement officials engage in torture, extrajudicial killing or enforced disappearances | <i>Establishment of/capacity support to independent law enforcement oversight bodies, including police commissions, review boards or magistrates</i> | <i>In cooperation with OHCHR and UN Resident Coordinator system, delivery of training to senior police officers on human rights standards</i> |
| | Victims of trafficking in persons are routinely prosecuted, detained or punished for illegality of entry or residence | <i>Review of criminal legislation and promotion of amendment in line with the Model Law against Trafficking in Persons</i> | <i>Establishment of/capacity support to specialized victim support units</i> |

| | | | |
|-------------------------------------------------|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Criminal justice system: prosecution and courts | Prosecutors and judges are not independent | <i>Introduction of judicial performance measurement system and transparent mechanism for complaints against judiciary</i> | <i>Promotion of competency and legal knowledge-based judicial selection process</i> |
| | Victims of crime are excluded from the justice process | <i>Reform of criminal procedure code and practice in light of basic principles for victims of crime and abuse of power</i> | <i>Development of victim and witness support services in court houses</i> |
| | Sentencing is disproportionate to the severity of the offence | <i>Development of sentencing guidelines based on comparative international experience</i> | <i>Consensus building for reform of criminal/penal code provisions on corporal or capital punishment</i> |
| | Persons convicted of drug trafficking are subjected to 'double punishment' | <i>Review of legal provisions on prisoner transfer and international cooperation</i> | <i>Provision of training on international cooperation in criminal matters and the finality of court judgments</i> |
| Criminal justice system: prisons | Untried prisoners are not separated from sentenced prisoners | <i>Support to prison management on implementation of standard minimum rules for treatment of prisoners</i> | <i>Identification of delays in justice process and capacity-building for faster processing of criminal cases</i> |
| | Prisoners enter prisons through undefined, administrative processes | <i>Work with prison administrations and courts to define clear admissions policy</i> | <i>Support capacity of legal and community advice centres to bring habeas corpus proceedings</i> |
| | Women prisoners frequently give birth in prison | <i>Conduct assessment to determine reasons for admission of women to prison</i> | <i>Advocate for children to be born in a hospital outside prison and support to development of special pre and post-natal care facilities</i> |
| | Different categories of prisoners are kept in the same parts of the prison institution | <i>Work with prison authorities to improve prisoner intake and release planning. Identify necessary prison infrastructure improvements</i> | <i>Support establishment and strengthening of probation, community supervision systems and other non-custodial measures with a view to reducing use of imprisonment where appropriate</i> |
| | High rates of transmissible and life-threatening diseases in prisons | <i>Improvement of on-entry health screening measures and strengthening of prison sanitation and health services, including for drug dependent prisoners</i> | <i>Include HIV/AIDS awareness training in prison education curricula and consider approaches to prison decongestion</i> |
| | Recreational and educational measures, such as books, are not provided in prisons | <i>Engage Ministry of Education or appropriate NGOs to assist in development of educational and vocational training programmes</i> | <i>Develop specific 'preparation for release' curriculum tailored to individual skills and needs</i> |
| | Prisoners do not have access to legal counsel | <i>Support development of public defenders office offering free defence counsel to those unable to pay. Promote effective case file management.</i> | <i>Engage local law firms to establish pro-bono defence panel contactable by telephone hotline</i> |
| Drug Prevention, Treatment and Care | Drug dependence not recognized as a health disorder | <i>Work with parliamentarians and civil society to raise awareness about the evidence base for drug dependence as a health issue</i> | <i>Advocate for comprehensive legal review of relevant legislative provisions, including criminal, social services, and health laws</i> |
| | Many persons are held in custody for minor drug offences | <i>Review of criminal and administrative codes and sentencing policy and development of guidance for police and courts on handling drug users</i> | <i>Support to alternative measures including dependence treatment and drug courts</i> |
| | Criminal penalties for drug possession for personal use dissuade access to treatment | <i>Review of criminal code and administrative codes and technical support for legislative reform in line with the drug conventions and international human rights law</i> | <i>Support to community health facilities and counseling offering confidential and comprehensive psychosocial and medical treatment</i> |

| | | | |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | High numbers of children make use of illicit drugs | <i>Provide support to multilevel, multi-disciplinary, evidence-based systems of parenting and family support strategies projects</i> | <i>Build consensus with parliamentarian, Ministry of Health and Ministry of Education and Social Affairs for comprehensive drug prevention programmes for children in-line with Article 33 CRC</i> |
| HIV Prevention, Treatment and Care | Absence of HIV prevention and treatment services in prisons | <i>Technical assistance for reform of prison policies and legal framework to ensure rights to access to evidence-based and gender sensitive HIV services</i> | <i>Support to community and prison services for recruitment, training and equipping of qualified health workers</i> |
| | Pregnant/nursing women living with HIV in prisons have no access to transmission prevention means | <i>Awareness raising of need for legislative provisions on rights to health and non-discrimination for women and child with a view to commencing legal reform process</i> | <i>Advocate with Ministry of Health, national HIV/AIDS committees and NGOs to provide support to prison administrations for delivery of 'preventing mother to child transmission' (PMTCT) services</i> |
| | Injecting drug users have no access to services to prevent the health and social consequences of drug use | <i>Advocate for injecting drug users to have access to needle and syringe programmes and support pilot projects</i> | <i>Work with local and regional health authorities and NGOs to secure and provide access to anti-retroviral therapy</i> |
| Alternative development and sustainable livelihoods | Eradication efforts result in loss of income for small scale illicit crop farmers | <i>Support development of alternative income generating activities for farmers dependent upon illicit crop income</i> | <i>Advocate for proper sequencing in order to ensure that eradication programmes only take place when alternative income generating activities are in place</i> |
| | Drug dependent individuals live in marginalized conditions with no access to basic means for an adequate standard of living | <i>Work with local and regional authorities and civil society organisations to identify and meet the basic socio-economic needs of drug dependent individuals</i> | <i>Advocate for effective drug demand reduction services, for pharmacological specific interventions for detoxification, withdrawal symptoms medication or relapse prevention, and for longer term sustainable livelihood intervention</i> |

ANNEX II – HUMAN RIGHTS STANDARDS RELEVANT TO UNODC

Human rights are interrelated and indivisible, which means that all international human rights are relevant to the work of UNODC. The table below is non-exhaustive and only presents a selection of some of the relevant human rights standards.

Law Enforcement

Law enforcement officials shall respect and protect human dignity and maintain and uphold the rights of all

Law enforcement officials shall not inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. Firearms shall only be used in self-defence or defence of others against the imminent threat of death or serious injury

Anyone who is arrested shall be informed at the time of the arrest of the reasons for his/her arrest and shall be promptly informed of any charges

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer. Pre-trial detention should be an exception and as short as possible

Powers of seizure and confiscation must be applied in a non-arbitrary, case proportionate manner and – depending upon the procedure in national law – in conformity with the right to fair trial

Searches and arrests must be based on real suspicion of criminal intent and not solely on the grounds of race

Any interference with the right to privacy, family, home or correspondence should be authorized by provisions of law that are publicly accessible, precise and proportionate to the security threat, and offer effective guarantees against abuse

Evidence, including confessions, elicited as a result of torture or other cruel, inhuman or degrading treatment must not be used in any proceedings

Prosecution and Courts

Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty by law and to be tried by a competent, independent and impartial tribunal

Criminal proceedings must be started and completed within a reasonable time

In the determination of any criminal charge, persons shall have the right to adequate time and facilities for the preparation of defence and to defend themselves through legal assistance of their own choosing. In any case where the accused does not have sufficient means to pay, and the interests of justice so require, legal assistance shall be assigned without payment by the accused

Both the accused and the prosecution in a criminal trial must be in a procedurally equal position during the course of the trial and have an equal opportunity to make their case

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any direct or indirect restrictions, improper influences, inducements, pressures, threats or interferences

Witnesses, relatives and defence counsel, as well as persons participating in the investigation, shall be protected against all ill-treatment or intimidation as a consequence of the investigation or evidence given

Trafficked persons should not be prosecuted for violations of immigration laws or for other activities as a direct result of being trafficked, but rather should receive assistance and protection

Sentencing and Prisons

The severity of penalties must not be disproportionate to the criminal offence. Imprisonment should be used as a penalty of last resort and the choice between penalties should take into account likelihood of rehabilitation

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person

The death penalty is prohibited for countries that have ratified the Optional Protocol to the International Covenant on Civil and Political Rights. For countries which have not abolished the death penalty, the sentence of death may be imposed only 'for the most serious crimes'. This is limited to an intention to kill which resulted in loss of life. Drug offences (including possession and trafficking) and offences of a purely economic nature do not meet this threshold.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation

Prisoners shall be provided with clothing and separate and sufficient bedding, food of nutritional value adequate for health and strength, drinking water, adequate bath and shower facilities, and medical facilities of no lesser standard than available outside of prison

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits

Non-Discrimination

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Direct discrimination arises when there is less favourable or detrimental treatment of an individual or group on the basis of a prohibited characteristics or ground, such as race, sex or disability. *Indirect* discrimination occurs when a practice, rule, requirement or condition is neutral on its face but impacts *disproportionately* upon particular groups, unless justified

Not all differences of treatment are prohibited discrimination under international law. In order to be justified, a distinction must pursue a *legitimate aim* and be *proportional*. The means of achieving the legitimate aim must be appropriate and necessary and relevant to the differential treatment

The right to privacy and non-discrimination protects individuals from mandatory and compulsory HIV testing except in cases of blood, organ or tissue donations. This includes in prison situations, where there is no public health or security justification for mandatory HIV testing of prisoners, nor discrimination against or segregation of prisoners living with HIV

Different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, legal reason for detention and necessities of treatment. Children should be separated from adults

Rights of Women

In all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, shall be taken to ensure the full development and advancement of women

Effective crime prevention and criminal justice responses to violence against women shall be human rights-based, manage risk and promote victim safety and empowerment while ensuring the accountability of the offender

Account shall be taken of the distinctive needs of women prisoners. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory

In cases involving violence or other crimes against women, the primary responsibility for initiating investigations lies with the police and prosecution authorities rather than with the victim. This is the case regardless of the level or form of violence

Court evidentiary rules and rules and principles of defence shall not discriminate against women. "Honour" or "provocation" may not be invoked by perpetrators of violence against women as a full defence to criminal responsibility

All appropriate measures shall be taken to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

Rights of the Child

The rights of the child shall be respected and ensured without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration

Every child alleged as, accused of, or recognized as having infringed the penal law shall be treated in a manner consistent with the promotion of the child's sense of dignity and worth and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society

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 the offender and the offence

The placement of a child in conflict with the law in an institution shall always be a disposition of last resort and for the shortest appropriate period

All appropriate measures, including legislative, administrative, social and educational, shall be taken in order to protect children from the illicit use of narcotic drugs and psychotropic substances

Drug prevention, treatment and care

Drug dependence is a multi-factorial health disorder. Nothing less should be provided than for any other chronic health condition. The right to health calls for evidence-based prevention, treatment and care services. Measures should include evidence-based prevention (family skills training, workplace and schools prevention, life skills education) and treatment (brief interventions, counselling, outreach work, psychosocial and pharmacological interventions in-line with established sound medical practice including, where appropriate, treatment with long-acting opioid agonists and symptomatic medication to ease withdrawal), as well as social assistance and measures to reduce the negative health and social consequences of drug use and dependence

Responses to drug law offences must be proportionate. Serious offences, such as trafficking in illicit drugs must be dealt with more severely and extensively than offences such as possession of drugs for personal use. For offences involving the possession, purchase or cultivation of illicit drugs for personal use, community-based treatment, education, aftercare, rehabilitation and social integration represent a more effective and proportionate alternative to conviction and punishment, including detention

Criminal law should not be an impediment to access to drug-dependence treatment

Drug-users when deprived of their liberty are particularly vulnerable and must receive appropriate medical care, including evidence-based drug-dependence treatment

Drug treatment should be voluntary and subject to prior full informed consent. Compulsory treatment may only be applied in exceptional situations of high risk for self or others, and for defined short periods that are no longer than strictly, clinically necessary. Such treatment must be specified by law, follow transparent procedures and be subject to medical and judicial review

Alternative development and sustainable livelihoods

All persons have the right to participate in a process that expands the capabilities or freedom of individuals to improve their well-being and capabilities

All development processes should be realized in a rights-based manner that is transparent, accountable, participatory, and non-discriminatory, as well as equitable and just

Freedom of choice is an integral part of the right to development. Where crop eradication of plants containing narcotic or psychotropic substances is carried out through indiscriminate means and/or without prior consultation the right to development risks being compromised

Consultations with affected persons regarding development activities must be active, in good faith, through culturally appropriate procedures, and with the objective of reaching an agreement

Development assistance should not be conditional on reductions on illicit crop cultivation

Development initiatives should ensure that women are able to fully participate in the development process with a view to ensuring realisation of women's economic and social rights, including rights to land, property, inheritance, adequate housing and an adequate standard of living

Everyone has the right to an adequate standard of living including the right to those things necessary for health and well-being, such as food, clothing, housing and medical care and necessary social services, the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond control

HIV/AIDS

Criminal law should not be an impediment to reducing the risk of HIV transmission among drug users or to HIV-related care and treatment for injecting drug users. Repeal of laws criminalizing the possession, distribution, and dispensing of needles and syringes, in favour of the authorization or legalization and promotion of needle and syringe exchange programmes should be considered

Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients. Children and adult sex workers who have been trafficked or coerced into sex work should not be prosecuted for such participation but provided with medical and psychosocial support services, including those related to HIV

The right to privacy and non-discrimination protects individuals from mandatory and compulsory HIV testing except in cases of blood, organ or tissue donations. This includes in prison situations where there is no public health or security justification for mandatory HIV testing of prisoners, nor discrimination against or segregation of prisoners living with HIV

Authorities should provide access for prisoners to HIV-related information, education and means of prevention, voluntary testing and counselling, confidentiality and HIV-related health treatment, care and support and access to and voluntary participation in treatment trials

Prisoners with terminal diseases, including AIDS, should be considered for early release and given proper treatment outside prison

Authorities should repeal HIV-specific criminal laws, laws directly mandating disclosure of HIV status, and other laws which are counterproductive to HIV prevention, treatment, care and support efforts. Only general criminal law (such as assault laws) should be applied to the intentional transmission of HIV. People living with HIV should not be discriminated against on the basis of their HIV status

ANNEX III – UNODC HUMAN RIGHTS REFERENCE GUIDE

References contain both binding and non-binding international human rights related standards. References are non-exhaustive, are provided by way of example only, and are not intended as a definitive statement as to the content of international human rights law.

Non-discrimination

- Prohibition on discrimination – ICCPR, Art 26
Right to freedom of thought, conscience and religion - ICCPR, Art 18
- Right to exercise economic, social and cultural rights without discrimination of any kind - ICESCR, Art 2
- Direct discrimination – HRC General Comment 18, para 7
- Indirect discrimination – CERD General Recommendation 14, para 2
- Legitimate and proportional distinctions – HRC General Comment 18, para 13
- Protection from mandatory HIV testing – International Guidelines on HIV/AIDS and Human Rights, Guidelines 3 (para 20(b)) and 5 (para 22(j))
- Separation of prisoner categories – Standard Minimum Rules for the Treatment of Prisoners, para 8

Rights of Women

- Development and advancement of women – CEDAW, Art 3
- Obligation to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women - CEDAW, Art 6
- Honour defences – CEDAW/C/JOR/CO/4, para 24
- Elimination of prejudices – CEDAW, Art 5
- Responses to violence against women – ECOSOC Res 2010/15
- Women prisoners – Draft United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders
- Police obligation to investigate violence against women – InterAmCommHR *Claudia Gonzalez v Mexico* (2009)

Rights of the Child

- Obligation for the best interests of the child to be a primary consideration - CRC, Art 3
- Non-discrimination with respect to child rights – CRC, Art 2(1)
- Best interests of the child – CRC, Art 3(1)
- General principles for juvenile justice – CRC, Art 40(1)
- Aims of juvenile justice – Beijing Rules, Art 5.1
- Detention to be a disposition of last resort – CRC, Art 37(b)
- Protection of children from illicit drugs – CRC, Art 33
- Right of the child accused of having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth - CRC, Art 40

Law Enforcement

- Right to liberty, security of person, and non-arbitrary arrest or detention - ICCPR, art 9
- Right to be informed of reasons for arrest – ICCPR, Art 9(2)
- Right to be brought promptly before a court – ICCPR, Art 9(3)
- Right to life - ICCPR, Art 6
- Right not to be subjected to enforced disappearance -ICPED, Art 1
- Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment - ICCPR, Art 7
- Right not to be subjected arbitrary or unlawful interference with privacy, family or home - ICCPR, Art 17
- Right to freedom of association - ICCPR, Art 22
- Right to liberty of movement - ICCPR, Art 12
- Obligation to take appropriate measures to investigate acts of enforced disappearance - ICPED, Art 3
- Powers of seizure and confiscation – ECtHR App No. 19955/05; E/CN.4/1995/19/Add.1
- Evidence-based searches and arrests – HRC Comm No. 1493/2006

- Intelligence gathering and the right to privacy – Report of the Special Rapporteur A/HRC/13/37
- General principles – Code of Conduct for Law Enforcement Officials, Art 2
- Prohibition on torture – UDHR, Art 5; CAT, Art 2; Code of Conduct, Art 5
- Use of force – Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Prosecution and Courts

- Right to a fair trial - ICCPR, Art 14
- Right to be presumed innocent – ICCPR, Art 14(2)
- Prohibition on retroactive criminal offences - ICCPR, Art 15
- Adequate time and facilities for defence – ICCPR, Art 14(3)(b)
- Prohibition on use of evidence obtained by torture – CAT, Art 15
- Timeliness of criminal proceedings – ICCPR, Art 9(3), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Art 38
- Protection of counsel – HRC General Comment 13, para 9
- Non-prosecution of trafficked persons – Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 2
- Equality of arms – ECtHR *Oferer* No.524/59 and *Hopfinger* No. 617/59
- Impartiality of judiciary – Basic Principles on Independence of the Judiciary, Art 2

Sentencing and Prisons

- Treatment of prisoners – ICCPR, Art 10
- Prohibition of the death penalty – ICCPR-OP2
- Restrictions on application of the death penalty – ICCPR, Art 6(2); Report of the Special Rapporteur A/HRC/4/20, para 53; ECOSOC Res 1984/50
- Prohibition on imprisonment related to contractual obligations – ICCPR, Art 11
- Provision of adequate facilities for prisoners – Standard Minimum Rules for the Treatment of Prisoners, paras 9-26
- Communication with family and visits – Standard Minimum Rules, paras 37-39
- Proportionality of penalties – A/CONF.144/28/Rev.1 at p.164

Drug prevention, treatment and care

- Right to the highest attainable standard of physical and mental health - ICESCR, Art 12
- Obligation to protect children from illicit use of narcotic drugs and psychotropic substances - CRC, Art 33
- Right not to be subjected to cruel, inhuman or degrading treatment or punishment - ICCPR, Art 7
- Right not to be subjected without free consent to medical or scientific experimentation - ICCPR, Art 7
- Right not to be subjected to arbitrary or unlawful interference with privacy, family or home - ICCPR, Art 17
- Right to an adequate standard of living - ICESCR, Art 11
- Right to appropriate serves in connection with pregnancy - CEDAW, Art 12
- Right to non-discrimination - ICCPR, Art 2
- Drug dependence as a health disorder – Report of the Special Rapporteur A/HRC/10/44, para 71
- Evidence based treatment for drug dependence – Report of the Special Rapporteur A/65/255, paras 50-55; A/64/92-E/2009/98, Political Declaration, para 21
- Proportionality of responses to drug laws – E/INCB/2007/1, Chapter 1, paras 13 and 60
- Criminal law should not impede access to drug treatment - Report of the Special Rapporteur A/65/255, para 62

- Detained drug users and access to services – A/HRC/10/44, para 59; CESCR, E/C.12/UKR/CO/5, para 51; A/64/92-E/2009/98, Plan of Action, para 16(c)
- Drug treatment should be voluntary – ICESCR, Art 12; CESCR General Comment 14, para 34; Report of the Special Rapporteur A/64/272, paras 88-91

Alternative development and sustainable livelihoods

- Adequate standard of living – ICESCR, Art 11
- Right to Development – A/RES/41/128; AChHPR, Art 22
- Development processes – Report of the Independent Expert A/55/306
- Freedom of choice in development – ACHPR Communication 276/2003, paras 278 – 279
- Requirement for good faith consultations – ILO Convention 169, Art 6
- Conditionality of development assistance – High-level task force on implementation of the right to development E/CN.4/2005/WG.18/TF/3, para 32
- Involvement of women in the development process – Sub-Commission Human Rights Res 1999/15

HIV/AIDS

- Right to non-discrimination - ICCPR, Art 2
 - Criminal law should not be an impediment to HIV/AIDS services – International Guidelines on HIV/AIDS and Human Rights, Guideline 4 (para 21(d))
 - Criminal law, sex workers and HIV/AIDS – International Guidelines, Guideline 4 (para 21(c))
 - Mandatory HIV testing – International Guidelines, Recommendations, para 120
 - HIV/AIDS and prisoners – International Guidelines, Guideline 4 (para 21(e))
 - HIV-specific criminal laws – International Guidelines, Guideline 4 (para 21(a))
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