

Global Drug Policy Observatory (GDPO) submission to the Office of the High Commissioner on Human Rights' report on the implementation of the UNGASS joint commitment to effectively addressing and countering the world drug problem with regard to human rights.

Based within Swansea University, UK, the GDPO is an impact-oriented research unit that aims to promote evidence and human rights-based drug policy through the comprehensive and rigorous reporting, monitoring and analysis of policy developments at national and international levels (www.swansea.ac.uk/gdpo/).

In accordance with the Human Rights Council's (HRC) Resolution 37/42,¹ this contribution aims to feed into the report of the Office of the High Commissioner for Human Rights (OHRHR) on the implementation of the UNGASS Outcome Document, 'Our joint commitment to effectively addressing and countering the world drug problem.' This submission relates to the crucial yet largely overlooked issue of metrics and indicators as they pertain to the intersection of drug policy and human rights.

Context and Overview

Measurement and data have long been integral to the way the international community has worked to address what has become known somewhat vaguely as the 'world drug problem.' From the early years of the current UN based international control framework, states have, as required by the three drug control conventions, furnished statistics on the licit trade in drugs and precursors to the treaties' monitoring body, the International Narcotics Control Board. Accompanying this process, mechanisms have also evolved to capture data on the state of the illicit market. In recent years, the United Nations Office on Drugs and Crime's (UNODC) Annual Report Questionnaire (ARQ) has been central to this process. Since 1997 it has provided the core data for the UNODC's flagship publication, the *World Drug Report*; a document that does much to set the tone of discussion and the 'mood music' for international debate within the UN's central policy making body on the issue area, the Commission on Narcotic Drugs (CND). Beyond fundamental issues relating to states' self-reporting on illicit markets within their borders, critiques of the ARQ also raise questions concerning its dominant focus on scale, flows and process. While admittedly undergoing some refinement in relation to among other things the health consequences of drug use, iterations of the Questionnaire devote relatively little attention to the outcomes of drug policy interventions. Such a disconnect has profound implications for monitoring the intersection between drug policy and human rights; a crucial nexus that is, at the rhetorical level at least, becoming ever more prominent within a range of UN structures and fora.

Traditionally an issue deemed to be of limited relevance in Vienna, the home of the UN drug control apparatus, the last decade or so has seen the issue of human rights become an increasing area of concern. Growing numbers of member states are appreciating the close connections between the implementation of national drug policies within the overarching architecture of the drug control conventions and human rights norms and obligations deriving from other parts of the UN system. Language around human rights and drugs has been evolving – albeit slowly - for some time,² with the most recent and significant expression of this shift in perspective identifiable in the *Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem*. This contains a welcome increase in references to a range of human rights compared to earlier soft law instruments, including notably a specific chapter devoted to 'Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities.' Reflecting the general situation in Vienna, what is lacking within the Outcome Document, however, is *specific* mention of mechanisms to monitor state adherence to the high-level commitments to human rights as agreed in New York in April 2016. Analysis of the drafting process suggests such an omission is the

result of the consensus-based negotiations for the document; a process that while producing high-level references to human rights obligations also ultimately resulted in a necessarily vague and imprecise final text.³ That sensitivities and diverging perspectives around the issue of human rights and associated indicators among member states continues to exist was in evidence during discussions in early 2018 to review the ARQs. Then there was little appetite to include within a revised Questionnaire any references to human rights, even in terms of proxy indicators such as levels of incarceration for drug offences. This was the case despite the increased profile of human rights throughout the Outcome Document.⁴

Refocusing of drug policy metrics: Opportunities and Entry Points

A refocusing of the traditional metrics frameworks to incorporate the myriad human rights dimensions of drug policy is clearly not an easy task. Indeed, it might be argued that technical and political complexities of any transition go a long way to explain relative stasis on the issue. That said, with an increasing drive to develop system-wide coherence on drugs and include a range of UN entities beyond those based in Vienna, as expressed in the Outcome Documents (Preamble) and elsewhere, has come increased opportunities to initiate change. This might involve the use of existing data sets from parts of the UN system not currently deployed, such as in the field of human development and those relating to the Sustainable Development Agenda and the related Sustainable Development Goals (SDGs) (see below). Additionally, issue specific expertise of bodies such as the OHCHR should not be overlooked.⁵ New approaches might include a combination of structural, process and outcome indicators to best assess states' drug policy implementation against human rights obligations.⁶

Within this context, the forthcoming report by Office of the High Commissioner for Human Rights represents a key opportunity to highlight the importance of indicators relating to drug policy and human rights and to encourage member states to engage in the development of monitoring structures. The rationale for such an endeavour can be found within both the Outcome Document and to a lesser extent Human Rights Council Resolution 37/42.

Regarding the former, there are various points in the text that can be seen to refer in one way or another to measurement, indicators and data collection that relate to human rights. These range from references to the collection and analysis of data 'including age- and gender-related data' within the preamble to operative paragraphs relating to data collection regarding supply reduction measures (OP3c), access to controlled substances exclusively for medical and scientific purposes, (OP2f) and mainstreaming a gender perspective (OP4g). This last point was also echoed within HRC Resolution 37/42 at OP4. Of specific note, however, are several other operative paragraphs within the Document that offer clear entry points to increase attention and promote specificity on the issue.

First is that recommending states to 'Consider, on a voluntary basis, when furnishing information to the Commission on Narcotic Drugs pursuant to the three international drug control conventions and relevant Commission resolutions, the inclusion of information concerning, inter alia, the promotion of human rights and the health, safety and welfare of all individuals, communities and society in the context of their domestic implementation of these conventions, including recent developments, best practice and challenges.' (OP4h). This appears to be a clear invitation to states to present information to the CND on a range of human rights indicators as they pertain to the implementation of domestic drug policy and as such warrants attention. This is particularly so when linked to references elsewhere in the Outcome Document to not only the Universal Declaration on Human Rights and 'other relevant international instruments' (Preamble), but also 'the systematic collection...of reliable and comparable data on drug use and epidemiology, including on social, economic and other *risk factors*....' (emphasis added) (OP1h). OP4h can also read alongside OP5u. In relation to 'Evolving reality, trends and existing

circumstances, emerging and persistent challenges and threats’ this encourages states to ‘Promote, as appropriate, the use and analysis of relevant, reliable and objective data generated by national and regional monitoring and evaluation to improve the implementation of comprehensive, integrated and balanced national drug control strategies, policies and programmes in conformity with the three international drug control instruments and *other relevant international instruments...*’ (emphasis added). Of further note is the reference within the Outcome Document to ‘human development indicators’ (OP6g). Although inclusion within the text relates specifically to the impact assessment of alternative development programmes, including preventative alternative development, a broader definition of human development beyond rural areas allows for its application across a range of policy outcomes. This is an important monitoring mechanism that, when paired with efforts to achieve the Sustainable Development Goals, appears to offer great potential in the pursuit of human rights aligned drug policy.⁷

Conclusions

The existence of such references within the Outcome Document provide the OHCHR with a timely opportunity to strengthen the place of metrics and indicators relating to drug policy and human rights within current UN documentation and associated discourse, especially in regard to the sixty-second session of the CND. When viewed in combination with the system-wide commitments to the SDGs, the Document offers a starting point from which to develop much needed levels of specificity and move beyond high level and often vague recommendations. Although, as analysis of debate at recent CND sessions reveals,⁸ the issue of human rights remains contested territory, OP4h in particular offers those states willing to engage with human rights indicators a structured opportunity to feed information to the CND and hence raise its profile. Mindful of the opportunity presented, in addition to utilizing specific aspects of the Outcome Document the OHCHR may wish to consider incorporation in its report of several process-oriented recommendations. These include:

- Support for the creation of an external advisory committee to utilize expertise and help develop system-wide coherence on drug policy metrics, including in relation to human rights.
- Consideration of regular assessments of the state of human rights vis-à-vis drug control that could be fed, independent of the ARQ, to the UNODC for inclusion into the World Drug Report.
- Mindful of the current stasis on human rights indicators in Vienna, consideration of utilizing existing human rights monitoring mechanisms in Geneva to monitor drug policy, for example the Universal periodic review (As mentioned in the Preamble of HRC Resolution 37/42)
- Work, as appropriate, with in the first instance a small number of member states to develop appropriate human rights indicators as they relate to drug policy.

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¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/083/15/PDF/G1808315.pdf?OpenElement>

² J. Bridge, et al, *Edging Forward: How the UN’s language on drugs has advanced since 1990*, Briefing Paper, September 2017, IDPC, TNI, GDPO, pp. 6-8 http://fileserver.idpc.net/library/Edging-Forward_FINAL.pdf

³ Dave Bewley-Taylor, *Towards Metrics that Measure Outcomes that Matter*, Policy Brief 10, April 2016, GDPO https://www.swansea.ac.uk/media/GDPO%20Metrics%20WEB_FINAL.pdf

⁴ David R Bewley-Taylor and Marie Nougier, ‘Measuring the ‘World Drug Problem’: 2019 and Beyond,’ in Axel Klein and Blaine Stothard (eds.), *Collapse of the Global Order on Drugs: From UNGASS 2016 to Review 2019*, Emerald Publishing (Forthcoming), pp. 66-83

⁵ See for example, OHCHR, Report on Indicators for Promoting and Monitoring the Implementation of Human Rights, 2008 http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf and Human Rights

Indicators: A Guide to Measurement and Implementation

https://ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf

⁶ See for example, Damon Barrett, *Drug Policy and Human Rights in Europe: Managing Tensions, Maximizing Complementarities*, Co-operation Group to Combat Drug Abuse and Trafficking in Drugs, Council of Europe, January 2018, pp. 13-15

⁷ International Expert Group on Drug Policy Metrics, *Aligning Agendas: Drugs, Sustainable Development and the Drive for Policy Coherence*, SSRC-IPI, February 2018, https://www.ipinst.org/wp-content/uploads/2018/02/1802_Aligning-Agendas.pdf and David R. Bewley-Taylor, 'Refocusing Metrics: can the sustainable development goals help break the "metrics trap" and modernise international drug control policy?', *Drugs and Alcohol Today*, Volume 17, Number 2, 2017, pp. 98-112.

⁸ For example see IDPC, The 2018 Commission on Narcotic Drugs. Report of Proceedings. June 2018, pp. 6-7 http://fileserv.idpc.net/library/CND-Proceedings-Report-2018_18.06.pdf