Children's rights and drug use

Introduction

Today, the ‘war on drugs’ has become an acceptable part of global political rhetoric, and often warrants special mention on election manifestos for parties from across the political spectrum. Drug users are often portrayed as deviants responsible for any number of social problems, ranging from the spread of HIV, spiralling rates of crime, and the corruption of innocent children. Set against this background, where stigmatisation carries broad social acceptance, it is hardly surprising that drug users are often subject to extreme human rights violations.

The human cost of punitive drug control measures, and the breadth of complicity in rights-violating measures, was particularly evident in early 2010 when reports surfaced of widespread child abuse in a Cambodian drug detention centre funded by the United Nations Children’s Fund (UNICEF). According to Human Rights Watch, “detention centres, mandated to treat and ‘rehabilitate’ drug users, instead subject them to electric shocks, beatings with electrical wire, forced labour, and harsh military drills.”

The horrific nature of the testimonies seemed magnified by reports of UNICEF’s financial endorsement, and subsequent disavowal, of conditions in the centres. The organisation has thus far refused to withdraw funding, supporting statements issued by the Ministry of Social Affairs – the government department running the centers – insisting there was no evidence of “major violations”.

While this is an extreme example, although it also by no means an isolated instance, the vast majority of countries have huge gaps in service provision for drug users. For those under the age of 18, the overarching concern for policy makers is, perhaps understandably, prevention and abstinence. However, this can mean that policies on treatment, and services targeted at under-18s, can be inadequate or even non-existent. As the International Harm Reduction Association (IHRA) notes, “all too often we bury our heads in the sand about children and youth using drugs….The reality is that children and youth under the age of 18 are using drugs and we need to deal with it honestly, openly and without judgment.”

In many countries, there are age thresholds for participating in harm reduction interventions, while “in most countries honest drug education for young people is severely lacking.” Children and young people are, moreover, excluded from policy design and the creation of education initiatives and awareness campaigns on the issue of drug use. When children and young people are discovered with drugs they are, in most countries, funneled through the criminal justice system instead of being afforded the help and support they might need through health interventions.

A lack of pragmatic health care solutions, such as needle exchange programmes, can render children more susceptible to HIV, Hepatitis and other infections transmitted through the sharing of needles. It is estimated that there are three million injecting drug users with HIV, corresponding to 5-10 per cent of all infections globally, many of which are attributable to sharing injecting equipment.

Alongside transmission through shared needles and syringes, sexual transmission probably plays a significant role for people who inject. Elsewhere, Dolan and Niven note that young people aged 15–24 years “account for fifty per cent of all new AIDS cases worldwide.” Moreover, Professor Paul Hunt, former UN Special Rapporteur on the right to the highest attainable standard of health, has noted that “discrimination against drug users can hinder HIV prevention efforts; people will not seek HIV counseling, testing, treatment, and support if this means facing discrimination, lack of...
privacy or confidentiality, alienation or in some cases, the threat of incarceration.”

Among young people, overdose is among the leading causes of premature death in many countries. Within the European Union, death rates more than doubled between 1985 and 2000 and, currently, 7-8000 acute drug-related deaths occur annually. Other threats include dependence, bacterial infections, and other physical and mental health problems. Criminalisation, however, has been shown to make matters worse, and profoundly affects poverty, education and health outcomes. Aryeh Neier, president of the Open Society Institute, has concluded that “there is no way to use the criminal law to deal with drugs, except in a very abusive way” and noted the intersection of repressive drug laws with racial discrimination and social marginalisation.

Violations of children’s rights

Children are failed by drug policies in a number of key areas in respect of the Convention on the Rights of the Child:

**Protection from drug use and involvement in the drug trade** (Article 33)

Article 33 requires that States take all appropriate measures to protect children from the use of drugs, and to “prevent the use of children in the illicit production and trafficking of such substances.”

The crucial question is: What do we mean by appropriate? The IHRA suggest that zero tolerance, “just say no” campaigns, random school drug testing and school exclusions, and the denial of harm reduction services for those under 18, are all examples of inappropriate measures.

“What is ‘appropriate’,“ argues the IHRA, “must take into account the right to life, health, education, social security and an adequate standard of living, to access to information, to freedom of expression and to privacy, and to freedom from discrimination, violence and neglect, from cruel inhuman and degrading treatment, economic exploitation and from arbitrary detention.” (21)

**Right to life, survival and development** (Article 6)

If children die as a result of overdose, infection, or as a direct result of State violence, and that death can be attributed to either State action or inaction, then a child’s right to life may have been violated. Article 6 emphasises that State Parties must “ensure to the maximum extent possible the survival and development of the child.”

**Non-discrimination** (Article 2)

If adults have access to harm reduction services, such as needle exchanges and substitution therapy, to which there is an over-18 age threshold, and other appropriate services for under-18s are non-existent, then this is an example of children being discriminated against in respect of access to health services (for more on children and non-discrimination, visit: [http://www.crin.org/discrimination/](http://www.crin.org/discrimination/)).

Children are also often unable to access services without parental consent. The International Harm Reduction Association notes that: “Harm reduction is mainly focused on adults…with youth programs still only focused on prevention and mandatory treatment.” Certain groups of children
may also face discrimination. For example, in the US and in the UK, disproportionate numbers of children from ethnic minority backgrounds face drug charges. The sentences they receive are also likely to be harsher. The Committee on the Rights of the Child has emphasised that States are obliged to ensure all the rights in the Convention are enjoyed without discrimination, including on the basis of “sexual orientation and health status (including HIV/AIDS and mental health).”

The right to health (Article 24)

Article 24 states: States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” The International Covenant on Economic Social and Cultural Rights (ICESCR) also guarantees the right to the highest attainable standard of health. Article 12(c) obliges states to take all steps necessary for “the prevention, treatment and control of epidemic . . . diseases,” which the Committee on Economic Social and Cultural Rights, the monitoring body for the ICESCR, has interpreted to include “the establishment of prevention and education programmes for behaviour-related health concerns such as sexually-transmitted diseases, in particular HIV/AIDS.”

This has been interpreted as being inclusive of harm reduction services. The Committee has further interpreted the realisation of the highest attainable standard of health as requiring that the state ensure equality of access to health care and provide health information and services without discrimination, while protecting confidential information. States must also take affirmative steps to promote health and to refrain from conduct that limits people’s abilities to safeguard their health.

A Human Rights Watch (2006) report states that: “In the face of this scientific consensus, and in the absence of equally effective alternatives, state-imposed barriers to harm reduction programs for injection drug users constitute interference with the human right to health. To the extent that drug users suffer from addiction-related disabilities, restricting these programs may also constitute a form of discrimination in access to health care.” (p.76)

The Committee on the Rights of the Child, in its General Comment on HIV/AIDS, at paragraph 39, states: “The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilised instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasise that policies and programmes aimed at reducing substance use and HIV transmission must recognise the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention.”

Access to appropriate information (Article 17)

In respect of Article 17 on the right to access information for the promotion of the child’s health, the Committee on the Rights of the Child has commented that: “The right of adolescents to access appropriate information is crucial if States parties are to promote cost-effective measures, including through laws, policies and programmes, with regard to numerous health-related situations, including those covered in articles 24 and 33 such as family planning...and the abuse of alcohol, tobacco and other harmful substances.”

Furthermore, “[i]t is the obligation of States parties to ensure that all adolescent girls and boys,
both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity." Paragraph 16 of the Committee’s General Comment on HIV/AIDS explains: “Children should have the right to access adequate information related to HIV/AIDS prevention and care.”

**Children in conflict with the law** (Articles 37, 40)

The rights of a child deprived of his/her liberty, as recognised in the CRC, apply with respect to children in conflict with the law, as well as to children placed in institutions for the purposes of care, protection or treatment. The Committee on the Rights of the Child, in its General Comment on Juvenile Justice (http://www.crin.org/docs/CRC_GeneralComment10.pdf) has emphasised that: “In all decisions taken within the context of the administration of juvenile justice, the best interests of the child are to be a primary consideration.”

Among other provisions, Article 37 requires that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”, “no child shall be deprived of his or her liberty unlawfully or arbitrarily”, and “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.” Article 40 requires States Parties to “recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”

Children and youth are routinely criminalised for drug use. If caught using drugs, and apprehended by police, they may be sent to mandatory treatment or rehabilitation facilities, where, in the worst cases, they may be subject to torture, inhuman or degrading treatment (as in the Cambodian case above), or to youth detention centres or jails. They may be kicked out of schools and educational institutions. In many countries, children are detained in the same prison wards as adults, for example in Jamaica http://www.crin.org/resources/infoDetail.asp?ID=21947&flag=news and Bangladesh: http://www.crin.org/resources/infoDetail.asp?ID=18194&flag=news

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (http://www.crin.org/Law/instrument.asp?InstID=1071) notes that drug addicted juveniles under detention pending trial may have particular needs (part 13), and that medical and psychological assistance is extremely important for institutionalised juveniles including drug addicts (part 26).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty recommend that “Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.” (http://www.crin.org/docs/UN_JJ_standards.doc)

As noted above, certain groups of children are often more likely to be arrested, and may be more vulnerable to abuse within the criminal justice system. These include street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girls, children with disabilities and children who are repeatedly in conflict with the law (recidivists). Moreover, notes the Committee, “it is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems...These acts, also known as Status Offences, are not considered to be an offence if committed by adults.”

**The right to participate** (Article 12)
The International Harm Reduction Association explains: “Children and youth are left out of policy design, and are not involved in creating prevention and awareness campaigns or training and material dissemination. Young people are seen only as recipients of services and not viewed integral components to the programme design. The exclusion of young people from programme and policy design is a result of the added barriers or stigma and discrimination faced by young people. Most if not all of the programming and policy making is facilitated without the involvement of target populations, including people who use drugs and young people.”

The right to education (Article 28)

Article 28 requires that States Parties “recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.” While it may be understandable that children using drugs are excluded from school, perhaps for the wellbeing of other pupils, their right to education, particularly on the basis of equal opportunity, has nonetheless been exposed to interference. Education is broadly conceived to be one of the most powerful means of empowering children to combat barriers which may be impeding the fulfilment of other rights, including social exclusion, poverty and drug use. In some, but by no means all countries, children with highly challenging behaviour, sometimes as a result of genetic defects or learning difficulties are provided with educational placements, so it could be argued that children who use drugs should also be provided with appropriate educational placements which take into account their particular needs.

The right to education could also include the right to harm reduction information; i.e drug information which does not just say “don’t”, but also “if you do, then remember that...” In keeping with the right to information, it should also include the opportunity to learn about the reality of drug use, the dangers and ways in which people can be protected from both the use of drugs and their harmful effects.

Find out more about drug use, health education and prevention here: http://www.unicef.org/lifeskills/index_7242.html

Data collection

A survey by IHRA concluded that there is a lack of data collection in respect of children using drugs. It found that “there is a lack of specific data about who the children using drugs are, why they are using drugs, why they use certain drugs and how they use them. Simply being young may be a risk factor but we need to know more. There is a lack of data on how many and which young people are living with HIV and/ or HCV and what other drug related harms they are experiencing.”

Moreover, where information on young people and drug use existed, this often excluded detailed data on young people under 16-18 years of age, street involved youth, and those who inject drugs.

Drug policy and the UN

While certain UN funds, programmes and mechanisms have been active in addressing violations of drug users rights – from the World Health Organisation to the Committee on the Rights of the Child – the UN drug control system has been criticised for prioritising punitive and repressive policies which result in considerable to harm to people using drugs. Barrett and Nowak argue that:

“Despite the documented negative human rights impacts of the current approach to drug policies, human rights have received little more than lip service in the UN drug control system. The international drug control conventions, which form the legal basis for international drug policy, were developed and have been interpreted in a vacuum from human rights law, and the..."
The principal organs of drug control have carried out their mandates with little reference to human rights norms, and little regard for their own human rights obligations. Meanwhile, the human rights machinery within the UN has paid scant attention to drug policies.  

The authors argue that there is a pressing need for an impact assessment of the current system alongside alternative policy options. Keep abreast of developments in respect of the UN, drug control and human rights via the International Harm Reduction Network: http://www.ihra.net/

The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, is the newest addition to the three major treaties covering drug control. The others are the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances.

In 2003, a European Parliament committee recommended repealing the 1988 Convention, finding that:

> [D]espite massive deployment of police and other resources to implement the UN Conventions, production and consumption of, and trafficking in, prohibited substances have increased exponentially over the past 30 years, representing what can only be described as a failure, which the police and judicial authorities also recognise as such. . . . [T]he policy of prohibiting drugs, based on the UN Conventions of 1961, 1971 and 1988, is the true cause of the increasing damage that the production of, trafficking in, and sale and use of illegal substances are inflicting on whole sectors of society, on the economy and on public institutions, eroding the health, freedom and life of individuals.


The Economic and Social Council established the Commission on Narcotic Drugs (CND) in 1946 as the central policy-making body of the United Nations in drug related matters. The International Narcotics Control Board (INCB) is the treaty body for the drug control conventions (what's a treaty body? http://www.crin.org/resources/infodetail.asp?id=13423#t). The UN Office on Drugs and Crime (UNODC) assists Member States with drug law, policy and programming, through expertise and research.

The Vienna NGO Committee on Narcotic Drugs provides a link between NGOs and the key intergovernmental and international agencies involved in drug policy, strategy and control. Read more: http://www.vngoc.org/. In 2007, UNODC, in partnership with the Vienna NGO Committee on Drugs, carried out a project entitled "Beyond 2008" to determine the merits of engaging NGOs in drug policy. Read more: http://www.unodc.org/unodc/en/ngos/beyond2008.html

Read a report by the International Harm Reduction Association on civil society engagement and international harm reduction policy: http://www.ihra.net/Assets/2521/1/CSEReportWeb.pdf

Children of drug users

Children of drug-using parents are more likely to be involved in crime, have behavioural problems and display mental health difficulties. Psychosocial and environmental risk factors associated with parental drug use further compound children’s vulnerability. These vulnerabilities “may arise as the result of fetal exposure to alcohol and drugs, poor or inconsistent parenting, a chaotic environment and/or financial challenges as a result of parental substance use, increased risk of child neglect or abuse, trauma, parental separation and risks associated with early exposure to alcohol and drug use.” Read more: http://womenandchildren.treatment.org/documents/cosa-resource-508v.pdf

Youth RISE

Youth RISE is the only youth-led international harm reduction network. Among other activities, the organisation – which is supported by IHRA, Release, UNICEF and the Open Society Institute
undertakes advocacy for harm reduction policies and the inclusion of young people into policy development at numerous international fora including the UN. Read their annual report: http://www.scribd.com/doc/27400357/Youth-RISE-annual-report-2009

Key organisations
- International Harm Reduction Association: http://www.ihra.net/
- Global Youth Network: http://www.unodc.org/youthnet/
- The Vienna NGO Committee on Narcotic Drugs: http://www.vngoc.org/
- Harm Reduction Coalition: http://www.harmreduction.org/section.php?id=62

Read:

References


3 Although there is no universally-agreed definition, the International Harm Reduction Association (IHRA) states: “Harm reduction refers to policies, programmes and practices that aim to reduce the harms associated with the use of psychoactive drugs in people unable or unwilling to stop. The defining features are the focus on the prevention of harm, rather than on the prevention of drug use itself, and the focus on people who continue to use drugs.”

5 Kroll C (2003) Assistance to country responses on HIV/AIDS associated with injecting drug use by the UN and other agencies: Report for the Interagency Task Team on injecting drug use.


12 Committee on the Rights of the Child, General Comment 4, para 6.

13 Committee on Economic, Social and Cultural Rights, General Comment 14, para. 16.

14 Committee on Economic Social and Cultural Rights, Concluding Observations, Tajikistan, (E/C.12/TJK/CO/1), para. 70; and Ukraine (E/C.12/UKR/CO/5), para. 28.

15 ICESCR article 2(2); Committee on Economic, Social and Cultural Rights, General Comment No. 14, paras. 12, 16, 18, 19, and note 8 (citing the right to information under article 19(2) of the ICCPR). Cited by Human Rights Watch . (2006)

16 Committee on Economic, Social and Cultural Rights, General Comment No. 14, paras. 30-37.

17 Committee on the Rights of the Child, General Comment 4, para 10.

18 Committee on the Rights of the Child, General Comment 4, para 26

19 Committee on the Rights of the Child, General Comment 10.

