# BRINGING HUMAN RIGHTS TO THE HEART OF DRUG AND ADDICTION POLICIES

## Guidance for aligning drug and addiction policies with human rights

Pompidou Group
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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Pompidou Group
Groupe Pompidou

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# I. INTRODUCTION

1. In December 2022, at the 18th Ministerial Conference under the motto "Human Rights at the Heart of Drug Policies", the Council of Europe International Co-operation Group on Drugs and Addictions (the Pompidou Group) adopted the Lisbon declaration, which reaffirmed its commitment to a human rights-centred approach in addressing drugs, addictions and related challenges. This was based on the revised mandate of the Pompidou Group adopted by the Committee of Ministers of the Council of Europe in June 2021, explicitly mandating the Pompidou Group "to promote respect for human rights in the framing, adoption, implementation and evaluation of drug and addiction policies"[1].

2. In pursuing its mission to promote the compliance of drug and addiction policy with human rights, the Pompidou Group has taken action in various ways. These include policy papers, expert reports, tools and guidance documents and a broad range of capacity building activities. As a result, this work has led to a number of lasting initiatives and brought about important insights and understanding to help advance policies on drug, substance and behavioural addictions.

1. Art. 1, Appendix - Revised Statute, Resolution CM/Res(2021)4.

This guidance document constitutes the next step forward by the Pompidou Group to bring human rights to the heart of these policies. It has been adopted as a policy paper at the 95th meeting of the Pompidou Group Permanent Correspondents (Strasbourg, 5-6 November 2024).

3. Tackling the worldwide drug situation requires a concerted effort that addresses the production, trafficking, trade, distribution and use of illicit drugs, which poses several challenges to the protection of human rights. Policy makers, implementers and evaluators must be aware and mindful of the human rights dimension, which should guide their choices and decisions to promote the full enjoyment of the right to the highest attainable standard of physical and mental health for individuals and for society as a whole.

# II. PROTECTED RIGHTS

4. Human rights are inherent to all human beings, regardless of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Human rights include the rights to life and liberty; freedom of thought, conscience and religion and freedom of expression; the right to work and education; the right to health; the right to live in an environment free of violence; and the prohibitions on slavery and torture or cruel or inhuman treatment or punishment. Human rights also encompass social rights, which are codified in the European Social Charter. Everyone is entitled to these rights, free from any form of discrimination.

5. States have obligations under international law to respect, protect and fulfil human rights. The obligation to respect human rights means that states must refrain from interfering with or curtailing the enjoyment of human rights, except in exceptional circumstances where restrictions are permissible by international human rights law. To meet these obligations, states must take positive action to facilitate the enjoyment of human rights.

6. Human rights referred to in this guidance document are enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the Convention) and other international legal instruments. Governments and relevant stakeholders are encouraged to regularly review drug policy compliance with the Convention, the case law of the European Court of Human Rights and the United Nations "International guidelines on human rights and drug policy", which are also referred to in the Pompidou Group's online self-assessment tool.

7. The key human rights to safeguard when addressing and countering all aspects of the world drug and addiction problem are the following.

    a. **The right to life** means first and foremost that states must protect everyone's life, including against extrajudicial killing. All Council of Europe member states have abolished the death penalty in peacetime and the European Court of Human Rights considers that there are strong indications that the right to life requires prohibition of the death penalty in all circumstances. Furthermore, drug-related or any other substance/behavioural addiction-related violence is a serious human rights concern, especially in countries where drug production and trafficking are prevalent. Drug trafficking is a serious crime against human life as it impedes one's ability to live in an environment that is free from violence.

Governments must take steps to ensure the safety and security of their citizens and respect the rule of law, thus ensuring the right to live in a safe and healthy environment.

b. **The right to health care** requires governments to ensure that all people, including people who use drugs and those with substance use disorder or addictive behaviours, have early access to evidence-based prevention and comprehensive healthcare services, biopsychosocial treatments, including agonist and antagonist treatment, recovery programmes and harm reduction. There should be no financial barriers to accessing these services. These services should also be made accessible to people in pre-trial detention and imprisonment, and those under probation and alternative measures to incarceration, to ensure continuity of treatment for substance use disorder and general healthcare. They should also respect the principle of equivalence of care with treatment options available to the community at large.

c. **The prohibition on torture or inhuman or degrading treatment or punishment** is absolute. No one shall be subjected to such conditions under any circumstances. Human dignity must be respected, and acts of torture or serious ill-treatment must be considered as criminal offences.

d. **The right to respect for private and family life**, which implies a **right to privacy**, requires governments to ensure that any surveillance or monitoring activities are lawful, proportionate and necessary to protect certain legitimate interests, among which are public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others. The right to respect for private and family life also obliges states to respect the confidentiality of individuals' personal health data and includes a positive obligation to prevent the disclosure of such data, including diagnostic tests, such as drug test results, without their free and informed consent.

e. **The right to a fair trial** sets out detailed procedural safeguards for defendants in criminal proceedings. This means that those accused of drug offences or of offences related to addiction are presumed innocent until proven guilty and must have access to prompt, comprehensible information on the charges against them, legal representation, the opportunity to cross-examine witnesses and the assistance of an interpreter if necessary.

f. **The right to freedom from discrimination and stigmatisation** implies that drug, substance and behavioural addictions laws and policies, as well as their implementation, do not discriminate against or stigmatise certain groups, including people who

use drugs and those with substance use disorder or addictive behaviours, gender groups, ethnic minorities, and affected communities. This includes also any correlated diseases such as HIV/Aids, hepatitis C and B, tuberculosis and drug use disorder. Governments must ensure that drug policies are evidence based and do not unfairly target people who use drugs and those with substance use disorder or addictive behaviours.

g. **The right to freedom of expression and freedom of assembly** is the anchor for civil society action. The participation of civil society is a prerequisite for the protection of human rights, in particular through the promotion of public awareness and securing the transparency and accountability of public authorities. This includes the right of people who use drugs and those with substance use disorder or addictive behaviours and their families, as well as people that are undergoing or have completed a treatment and recovery process and their families, to have their voices heard and their views considered in drug policy development, service delivery and evaluation, as expressed in the motto: "Nothing about us without us".

h. **The right to prevention, as that to treatment and harm reduction**, entails the state's commitment to provide evidence-based measures to protect different populations. In particular, protecting children,

youth and vulnerable groups, from the harm of use of drugs, other substances and addictive behaviours as well as from drug supply. From this follows **the right to be informed about the risks and dangers of the use of all psychoactive substances**, including prevention from exposure to malicious online content.

i. **The prohibition of slavery and forced labour** requires that governments act against any form of modern slavery and forced labour that can be found in the production, trafficking and trade of illicit drugs. Primary targets for victimisation are vulnerable groups, particularly children, women and minority populations.

# III. HUMAN RIGHTS POLICY OBJECTIVES

8. Overall, drug policy requires a comprehensive approach that prioritises human rights and balances public health and safety concerns with the protection of individual liberties and freedoms. In this context, it needs to be recalled that governments have obligations under international and national law to safeguard the fundamental standards of human rights and the rule of law which also apply to drug offenders.

9. Respect for human rights and the rule of law is important for effective implementation of the international conventions on drug control and instruments related to addictive behaviours. Their violation can hinder the criminal justice system and may lead to discriminatory and disproportionate responses to drug offences and undermine the public health safeguards.

10. Policy makers, managers, professionals, people who use drugs and those with substance use disorder or addictive behaviours must be aware and mindful of the human and social rights that should guide their choices and decisions, also with respect to the safeguarding of public health. All stakeholders should take full account of human and social rights when

developing, implementing, monitoring and evaluating drug and addictions policies. This should be pursued on the basis of the following policy objectives:

a. opposing death penalty, in all places and in all circumstances, including for drug-related offences, and urging all states that still apply this inhuman punishment to establish a moratorium before its definitive abolition;

b. promoting the respect for the rule of law and good governance;

c. condemning extrajudicial executions and all forms of arbitrary or extrajudicial arrest and detention, and the use of torture and other inhuman or degrading treatment or punishment in all circumstances;

d. ensuring the availability of evidence-based early universal, selective, indicated and environmental prevention programmes at all levels and accessible to relevant target groups;

e. ensuring recovery paths and providing social and professional reintegration programmes;

f. providing access for all people who use drugs and those with substance use disorder or addictive behaviours, as well as those in pre-trial detention and imprisonment, to evidence-based quality healthcare. Including opioid agonist treatment, rehabilitation, recovery, risk and harm reduction

and any interventions aimed at improving their health condition;

g. ensuring adequate provision and access to housing, education, employment and social benefits for people who use drugs and those with substance use disorder or addictive behaviours and their families or significant others;

h. investing in safe and healthy environments or communities that are free from violence, drug use, any forms of addiction and drug-related offences;

i. creating opportunities to ensure human dignity and overcome stigma and discrimination of people who use drugs and those with substance use disorder or addictive behaviours;

j. heeding the notion of human dignity by applying a person-first approach to ensure equal opportunities for all those concerned based on their individual needs with the aim of leaving no one behind;

k. promoting the mainstreaming of gender aspects in all areas of drug policy;

l. avoiding coercive sanctioning and promote alternatives to criminal justice sanctions encouraging proportionate sentencing in court and other legal processes involving people who use drugs and those with substance use disorder or addictive behaviours;

m. raising awareness of human rights and relevant standards. Each stakeholder group should acknowledge its role and underpin its action by empowering members through raising awareness about their role and through capacity building on the potential human rights impact of their actions;

n. researching the potential risks of new information and communication technologies. This includes developing prevention strategies to protect in particular children and young people from exposure to drug and any other form of substance or behavioural addiction, enticing content and criminal operators;

o. providing adequate funding for prevention, treatment and care, risk and harm reduction and recovery;

p. making the best possible use, in accordance with human rights law, of e-medicine and online counselling, and support other emerging online technologies including artificial intelligence to increase access and coverage of services, particularly for those who are difficult to reach.

# IV. SPECIFIC CHALLENGES

11. Inappropriate and disproportionate use of force against people who use drugs and those with substance use disorder or addictive behaviours, as well as all forms of coercive treatment such as mandatory testing, constitute a violation of human rights and are a source of physical and mental harm and distress.

12. Under the international drug control conventions, governments have an obligation to make adequate provision to ensure, and to not unduly restrict, the access to and availability of controlled substances that are considered indispensable for medical and scientific purposes.

13. The availability and development of evidence-based drug demand reduction initiatives, such as early prevention, screening, brief interventions, innovative treatment and recovery programmes represent an important component of the right to health. Political decision makers should remove barriers and guarantee access to an adequate and updated provision of services.

14. Evidence-based risk and harm reduction is grounded in justice, public health and human rights – it focuses on positive change and on working with people without judgment, coercion and discrimination, or requiring that they stop using drugs as a precondition of support. It must be implemented in order to prevent correlated diseases or greater harm (such as overdose) and put people with addiction in contact with healthcare services. Harm reduction improves not only the health of people who use drugs and those with substance use disorder or addictive behaviours, but also that of their families, their immediate environment and society in general, and it is based on a strong commitment to human rights.

15. The crucial principles of patient consent and medical confidentiality play a major role in the treatment of substance use disorder. Consent of an adequately informed patient, "informed consent", is a prerequisite for any treatment or diagnostic test.

16. Withdrawal from psychoactive drugs without medical treatment can cause severe suffering and, particularly in cases of acute withdrawal from benzodiazepines and alcohol, life-threatening conditions that require hospital care. Not offering medication-assisted treatments amounts to malpractice and can constitute a human rights violation.

17. Drug use in prison settings is frequent, while people incarcerated for drug-related offences make

18. up a large proportion of prison populations. Therefore, the availability of evidence-based prevention and treatment in custodial settings, including the continuity of care, is required. Furthermore, alternatives to incarceration or punishment are permissible and encouraged under the United Nations drugs conventions and constitute positive human rights practice.

19. Ensuring the proportionality of criminal sanctions by prioritising non-custodial measures at the

20. sentencing and post-sentencing stages for persons charged with or convicted of drug offences or drug-related offences of a minor nature.

21. Engaging civil society, people with lived and living experience of drug use, and affected communities in the design, implementation and evaluation of drug and addiction policies and specific interventions, to ensure that their needs, knowledge and experience are considered and their human rights are fulfilled.

22. Serious concerns have been expressed about discriminatory behaviour towards people who use drugs and those with substance use disorder or addictive behaviours that has emerged in the wake of global financial and economic crises, resulting in stigma and social exclusion. The political and societal acceptance of substance use disorder as being no different from other chronic diseases appears to have been severely undermined by the social circumstances following

austerity measures in times of financial crisis. In the light of the fact that the availability, accessibility and quality of services are elements affected by economic crisis, which creates inequalities, thus aggravating health indices, immediate political action is called for to mitigate the impact of economic crises and to provide essential services for people who use drugs and those with substance use disorder or addictive behaviours, even under strict budgetary constraints.

# V. ASSESSMENT AND EVALUATION

23. There is a need to have processes in place for ongoing assessment to ensure that human rights are and remain respected and safeguarded. Mechanisms in place should be capable of bringing to light evident human rights issues – such as the death penalty – and offering an opportunity to redress more subtle consequences that are difficult to discern when focusing on societal concerns.

24. The results of the assessment of policies from a human rights perspective should, in turn, feed back into the policy-making process.

25. Governments are encouraged to conduct periodically a comprehensive review of their countries' drug policies which will serve to optimise results and to promote the exchange of experiences and lessons learned. In doing so, states can rely on a range of tools, including the Pompidou Group's Self-Assessment Tool for Drug Policy Compliance with Human Rights Standards; as well as indicators available from various sources such as the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Office on Drugs and Crime (UNODC) or the UN High Commissioner for Human Rights.

26. In this context it is also important to maintain good relations and collaboration between the government sector and civil society stakeholders. The aim of co-operation and joint action in partnerships should be to avoid duplication and waste, create synergies, maintain service quality and wide availability and accessibility, as well as cost control.

# VI. DEMOCRATIC GOVERNANCE

27. Relevant democratic governance principles – relying on science and evidence, inclusive dialogue and participation, transparency and accountability – should be incorporated into all stages of the process of development, implementation, monitoring and evaluation of drug and addiction policy. Monitoring and reporting are fundamental governance tools and should be underpinned by solid research on the drugs and addictions phenomenon.

28. Within their respective roles, duties and responsibilities, all stakeholders, that is government, non-governmental organisations, scientific, professional and academic communities, international or regional organisations or agencies, as well as organisations representing people who use drugs and those with substance use disorder or addictive behaviours, their families and other service users, should contribute to the drug policy governance process.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.