

## A CALL FOR COMMITMENT TO DRUG POLICY REFORM IN THE PHILIPPINES UNDER A HUMAN RIGHTS FRAMEWORK\*

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Ladies and gentlemen.

I wish to thank the Free Legal Assistance Group (FLAG) Anti-Death Penalty Task Force for organizing this forum and inviting me to participate in it. I am both grateful and honored. This is an important and timely initiative, and one that I support wholeheartedly.

The United Nations Office on Drugs and Crime (UNODC) estimates that some 29 million people worldwide suffer from disorders due to drug use, while drug trafficking by transnational criminal cartels is a major source of violence and insecurity all over the world, affecting every society.<sup>1</sup> Drug trafficking is also a major source of corruption that undermines both the rule of law and good governance, and consequently, eroding public trust.<sup>2</sup>

Altogether, drug trafficking, drug abuse, and their consequences constitute major threats to the lives, health, dignity, and hopes of millions of people and their loved ones. In response, almost a year ago to this very day, heads of states and governments assembled at the United Nations Headquarters to consider a global plan of action called “Our joint commitment to effectively addressing and countering the world drug problem”<sup>3</sup> (“Joint Commitment”). I encourage you to consult it. The document is difficult to summarize given its breadth but allow me to highlight a few of its key aspects.

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<sup>1</sup> United Nations Office on Drug and Crime, *World Drug Report 2016* [hereinafter “World Drug Report”], at 1, available at [https://www.unodc.org/doc/wdr2016/WORLD\\_DRUG\\_REPORT\\_2016\\_web.pdf](https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf).

<sup>2</sup> *Id.* at 84.

<sup>3</sup> Our joint commitment to effectively addressing and countering the world drug problem [hereinafter “Joint Commitment”], U.N. Doc. A/RES/S-30/1 (2016). The resolution was published on May 4, 2016.

## I.

The special session of the United Nations General Assembly drafted a comprehensive approach that takes into account a range of human and other factors that drive the drug problem. This included social development, public health, justice, and human rights.<sup>4</sup>

It calls for a more effective approach than the punishment or punitive model that some governments have adopted.<sup>5</sup> It urges governments to uphold the “inherent dignity of all individuals,” “to respect, protect, and promote all human rights, fundamental freedoms[,] and the rule of law in the development and implementation of drug policies.”<sup>6</sup>

The Joint Commitment also recognizes that drug dependence is a complex health disorder of “a chronic and relapsing nature, with social causes and consequences can be prevented and treated through, *inter alia*, scientific and evidence-based drug treatment, and care and rehabilitation programs, including community-based programs[.]”<sup>7</sup>

The world’s leaders likewise recognized the important role played by civil society organizations and those entities involved in drug-related treatment services. Leaders committed to intensify the role played by these organizations and to cooperate with them.<sup>8</sup>

They repeatedly denounced drug-related corruption,<sup>9</sup> decriing its role in the “obstruction of justice, including through the intimidation of justice officials.”<sup>10</sup>

They promised to elaborate on effective scientific evidence-based prevention strategies that are centered on and tailored to the needs of individuals, families, and communities. They committed to promote proportionate national sentencing policies, practices and guidelines for drug-related offences.<sup>11</sup>

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<sup>4</sup> *Id.* at 4-7.

<sup>5</sup> *Id.* at 8, 13.

<sup>6</sup> *Id.* at 12.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 8-11.

<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 2, 5-6, 15-16.

Throughout the Joint Commitment, governments affirmed the importance of systematic data collection, evidence gathering, scientific research and the sharing of information, including the exchange of best practices related to preventing and countering drug-related crime.<sup>12</sup>

What governments did *not* commit to last year was the “War on Drugs” approach.

Quite to the contrary, they called for what amounts to a balanced, multi-faceted, multi-disciplinary approach, and they placed great emphasis on health, rights, and justice.<sup>13</sup>

They did *not* suggest that the death penalty was an appropriate or effective response to drug trafficking, let alone drug use. Instead, they spoke of proportionate sentencing and alternative punishments.<sup>14</sup>

This document is not perfect. The Joint Commitment is criticized—by both activists and a number of politicians from around the world—for not considering more explicitly the role of harm reduction strategies, such as needle and syringe programs, and the prescription of substitute medications.

However, in April 2016, the general assembly of the world’s government explicitly recognized that the “War on Drugs”—be it community-based, national or global—does not work. Further, it recognized that many harms associated with drugs are not caused by drugs, but by the negative consequences of ill-conceived drug policies.

## II.

The Joint Commitment is a call for action, but not to just any action. According to the world’s leaders there are other ways, better ways—evidence-based and scientific ways—of combating drug abuse and trafficking; ways that do not make matters worse.

Ill-conceived drug policies not only fail to substantively address drug dependency, drug-related criminality, and the drug trade itself, but they add

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<sup>12</sup> *Id.* at 9-10, 17.

<sup>13</sup> *Id.* at 2-3, 10, 17.

<sup>14</sup> *Id.* at 13-14.

more problems as has been well documented around the world, including by United Nations bodies and Special Rapporteurs.<sup>15</sup>

They add to, escalate and/or compound problems<sup>16</sup> such as killings, extra-judicial or by criminal gangs, the breakdown of the rule of law, criminal activity by vigilantes, torture,<sup>17</sup> maltreatment and sexual violence, prolonged pre-trial detention,<sup>18</sup> mandatory sentencing and disproportionately long sentences for drug possession, detention in drug and rehabilitation centers without trial or a proper evaluation of drug dependency,<sup>19</sup> and non-consensual experimental treatment.<sup>20</sup>

Further, badly thought out, ill-conceived drug policies can foster a regime of impunity that infects the whole justice sector and reaching into all of society. It invigorates the rule of violence rather than the rule of law, and

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<sup>15</sup> See e.g. *Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the U.N. General Assembly Special Session on the Drug* (Dec. 7, 2015), available at <https://www.ohchr.org/Documents/Issues/Health/SRLetterUNGASS7Dec2015.pdf>.

<sup>16</sup> See Study on the impact of the world drug problem on the enjoyment of human rights, Report of the United Nations High Commissioner for Human Rights, ¶¶ 36-49, U.N. Doc. A/HRC/30/65, (Sept. 4, 2015).

<sup>17</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 73, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013). See also Manfred Nowak, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 85, U.N. Doc. A/HRC/13/39/Add.2 (Dec. 21, 2009); Torture and other cruel, inhuman or degrading treatment or punishment, ¶ 68, U.N. Doc. A/68/295 (Aug. 9, 2013).

<sup>18</sup> Inter-American Commission on Human Rights, *Report on the Use of Pretrial Detention in the Americas (2013)*, at 5, 9, 27, & 137, available at <https://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf> (last accessed May 5, 2017). Study on the impact of the world drug problem on the enjoyment of human rights, Report of the United Nations High Commissioner for Human Rights, ¶ 36, U.N. Doc. A/HRC/30/65, (Sept. 4, 2015). See also Harm Reduction International, *The Death Penalty for Drug Offences: Global Overview 2012*, available at [https://www.hri.global/files/2012/11/27/HRI\\_-\\_2012\\_Death\\_Penalty\\_Report\\_-\\_FINAL.pdf](https://www.hri.global/files/2012/11/27/HRI_-_2012_Death_Penalty_Report_-_FINAL.pdf) (last accessed May 5, 2017).

<sup>19</sup> Harvard FXB Center for Health and Human Rights and Open Society Foundations, *Health and Human Rights Resource Guide (2013)*, at 4.7, available at <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/25/2014/03/HIIRRG-master.pdf> (last accessed May 5, 2017), citing Open Society Foundations, *Treated with Cruelty: Abuses in the Name of Rehabilitation (2011)*, available at <https://www.opensocietyfoundations.org/sites/default/files/treatedwithcruelty.pdf> (last accessed May 5, 2017).

<sup>20</sup> See Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, ¶¶ 31-32, 34, & 37, U.N. Doc. A/65/255 (Aug. 6, 2010); Méndez, *supra* note 17, ¶¶ 40-42.

erodes public trust in public institutions, breeding fear, and leading people to despair.<sup>21</sup>

These are the findings from research undertaken around the world. Let me be clear: in none of the countries where the perverse consequences of ill-thought out drug policies were reported did the drug problem disappear. In fact, the opposite happened.<sup>22</sup>

### III.

And so we are here, today and tomorrow, to learn from experts here and from abroad, from those who have long considered, studied and analyzed drug policies and their impact and effectiveness. We are here together to contribute to the implementation of the Joint Commitment by providing evidence and data to support evidence-based policies and strategies, and collaborating and cooperating across different countries and diverse areas of expertise—highlighted as so important by governments last year. We are here, listening to one another respectfully and politely, but also engaging in a robust exchange. We are here developing proposals, with and for the Government of the Philippines, other stakeholders, and its people—proposals on drugs policies and responses that are effective and sustainable, taking into account the country's specific situation, history and context, as well as its multiple assets and opportunities. To take part in these exchanges is truly a privilege and I thank you for it.

### IV.

Let me end by sharing some personal reflections.

Those of us who are involved in human rights work know all too well that we are living in a world of intense disruption. Its symptoms and footprints are there for all to see. It is apparent everywhere: climate, the movement of people, globalized economy, and globalized crime. But there is also a disruption of norms and values.

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<sup>21</sup> Study on the impact of the world drug problem on the enjoyment of human rights, Report of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/30/65 (Sept. 6, 2015).

<sup>22</sup> War on Drugs Report of the Global Commission on Drug Policy (2011), available at [https://www.globalcommissionondrugs.org/wpcontent/themes/gcdp\\_v1/pdf/Global\\_Commission\\_Report\\_English.pdf](https://www.globalcommissionondrugs.org/wpcontent/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf) (last accessed May 5, 2017).

The High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, has often lamented the caustic consequences of these disruptions. It is not merely that human rights are abused—they frequently are and frequently have been. What is exceptional is the fact that the very idea of human rights is being questioned and in many places rejected. And that constitutes a marked alteration of our environment globally and locally, in what is possibly the most significant human rights development since the establishment of the modern global and universal human rights system at the end of the Second World War.

The attacks we are witnessing on universal, indivisible rights—the undermining of equality, dignity, and accountability—share similarities wherever they take place. There is an extensive application—advocacy, even—of a doctrine of global war. A certain conception of security, narrowly defined and in opposition to genuine human security, is taking hold. The distinction between combatants and non-combatants has blurred, and an ever-broadening understanding of the “enemy,” including the enemy within.

Most crucially, however, this rejection of human rights is predicated on a rejection of our common humanity. The rejects, those that don't fit in and are not welcomed and are criminalized and punished, may differ from country to country, community to community, and leader to leader. However, rest assured they all are human.

They may be migrants or refugees, they may be the poor or the homeless, they may be street children, they may be indigenous people, they may be political opponents or critics, they may be drug users or drug pushers. They are the others, who, for one reason or another, are denied their humanity and their human standing, their rights to justice, to freedom of movement, to protection from force, and to freedom of expression, and who are denied as right holders and as citizens.

These profoundly disturbing developments are occurring at the hands of authorities that should and can know better. This demonization—and the unaccountable empowerment of authority that accompanies it—pushes open a door into an abyss, a void into which humanity has thrown itself before with awful consequences, because one cannot deny the humanity of some without losing humanity for all.

## V.

And so we are here today. I am immensely grateful for this invitation, and for giving me this incredible opportunity to spend some time with you.

Over the last eight months—since I have been appointed UN Special Rapporteur—I have watched, and from afar, but never from too far. I have followed the testimonies of the relatives of victims, and I have seen the brave work of civil society actors, lawyers, human rights defenders, academics, and senators. I have heard debates between politicians, the explanations given by government officials, and indeed I have also watched footage of police and military men, all saying that there are other ways and better ways, and other and better options.

This forum, with the commitment and the good will of all parties—from the government to members of civil society, and from the police to the health sector—is an important benchmark. It shines the light of scrutiny, of fact-finding, of knowledge, and of evidence that is impartial and true, so that we may seek more clearly our way towards preventing, responding, and providing support.

This light of evidence will help identify and implement the best possible drug policy reform. This light will lead to rights upheld, fulfilled and enjoyed for and by all.

Former United States Vice President Hubert Humphrey once observed that “the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life[.]”<sup>23</sup>

People living in life’s shadows are not to be abandoned there. *We* are not to be abandoned there.

I am deeply honored to have been involved in this journey with you and I am deeply committed to continuing, beginning with this two-day conference.

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<sup>23</sup> Hubert H. Humphrey, Remarks made at the dedication of the Hubert H. Humphrey Building, *Cong. Rec.* 123, at 37287 (Nov. 1, 1977).