

The Fight for Accountability

The Right to Rights

Opportunities to Engage in Human Rights Advocacy for the
International Network of People who use Drugs (INPUD)



International
Network of People
who Use Drugs

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ABBREVIATIONS AND ACRONYMS

AIDS and Rights Association of Southern Africa	ARASA
African Men for Sexual Health and Rights	AMSHeR
Civil society organisations	CSOs
Committee Against Torture	CAT
Committee on Economic, Social, and Cultural Rights	CESCR
Committee on Elimination of Discrimination Against Women	CEDAW
Committee on the Rights of Persons with Disabilities	CRPD
European Court of Human Rights	ECHR
Harm Reduction International	HRI
Human Rights Committee	CCPR
Human Rights Council	HRC
Human Rights Watch	HRW
International Criminal Court	ICC
International Drug Policy Consortium	IDPC
Joint UN Programme on HIV and AIDS	UNAIDS
Lesbian, gay, bisexual, transgender, queer, intersex	LGBTQI+
Non-governmental organisations	NGOs
Southern Africa Litigation Centre	SALC
Special Rapporteur	SR
Opioid substitution therapy	OST
Office of the High Commissioner for Human Rights	OHCHR
Organisation of American States	OAS
United Nations	UN
Universal Declaration of Human Rights	UDHR
Universal Periodic Review	UPR
Working Group on Arbitrary Detention	WGAD
World Health Organisation	WHO

OPPORTUNITIES TO ENGAGE IN HUMAN RIGHTS ADVOCACY FOR THE INTERNATIONAL NETWORK OF PEOPLE WHO USE DRUGS (INPUD)

Human rights violations against people who use drugs have been widely documented, including abuses by police; abuses in detention; discrimination by schools, employers and health care workers; and in some countries, extrajudicial killings. However, a growing number of United Nations (UN) experts and agencies, as well as some member states, have acknowledged these harms – many of which were committed in the context of a failed global ‘war on drugs’. The consensus has sometimes begun with reports and resolutions from UN human rights mechanisms. Engagement with these mechanisms, however, can be a highly specialised and time-consuming work, requiring knowledge of legal norms, bureaucracies, procedures, and even personal connections in the cities where these mechanisms are headquartered. Given limited resources, to what degree should resource-limited local, regional, and global drug user-led networks engage in advocacy with UN human rights mechanisms? Where does this advocacy have the most effect? Are there ways to rely on the work of other civil society groups, or areas where drug-user-led networks have a comparative advantage?

To explore these and related questions, this report introduces the different mechanisms and processes and how they have weighed in on human rights issues relevant to networks of people who use drugs. It also shares some specific cases to review the effect or impact they had. The report concludes with recommendations for areas of focus as part of the work of the International Network of People who Use Drugs (INPUD) with the Love Alliance. The mechanisms discussed here include:

- The International Criminal Court
- UN Human Rights Council: Universal Periodic Reviews (UPR) and Special Procedures
- Human rights treaty bodies
- Regional mechanisms and courts

While the above list is not comprehensive, it gives an overview to each type of mechanisms and explores examples of each, highlighting some case studies relevant to people who use drugs. This paper is intended for INPUD and other drug-user-led networks, especially in the 10 countries supported through the Love Alliance project: **Burkina Faso, Burundi, Egypt, Kenya, Morocco, Mozambique, Nigeria, South Africa, Uganda, and Zimbabwe.**

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In particular, this paper explores:

- What is the background and history of these mechanisms, and of engagement with them on rights of people who use drugs?
- Among the various human rights mechanisms, which ones have meaningfully acknowledged rights abuses faced by people who use drugs? Which have been open to receiving inputs and collaborating with drug user advocates?
- Which human rights mechanisms have been most helpful for influencing national level policy change and have produced results and led to changes in laws and policies affecting people who use drugs? Which have not been helpful?
- How can drug user advocates most effectively engage with human rights mechanisms, and what are some risks and opportunities to consider?
- What resources are available to support this work?

The paper begins with an overview to the UN Human Rights Council and related bodies and procedures, as well as some critiques of the human rights system, and a brief history of the recent engagement of drug policy activists with the system. It then turns to consider each mechanism involved, and some resources available to support INPUD and its members in future engagement. Recommendations are included in each section and summarised at the end. The annexes include additional resources.

Overall, as a peer-led network made up of national and regional peer networks, INPUD has specific and important opportunities to use the ‘show in Geneva’ to catalyse meaningful change at national levels, and to ensure that ‘nothing about us without us’ is applied to human rights mechanisms, as it has often been championed in HIV mechanisms.

Those interviewed for this report agreed that INPUD and its members have an important role to play. In the words of one: “We need INPUD in Geneva!”

1.0 BACKGROUND

A HISTORY AND OVERVIEW

In 1946, the UN General Assembly established the UN Human Rights Commission. Made up of 53 member states, its procedures and mechanisms were mandated to examine, monitor, and report on human rights violations in specific countries or territories, or on thematic issues worldwide. This was criticised in part because countries with poor human rights records became members.

In 2006, the Commission was replaced by the UN Human Rights Council (“the Council”), an intergovernmental body which is a subsidiary of the General Assembly, discussed further below. Its work includes the UPR mechanism, which assesses each UN member state’s progress on human rights using a peer review approach (discussed in more detail below); an Advisory Committee which studies thematic issues; a Complaints Procedure to which individuals and groups can raise complaints about human rights violations; and the Special Procedures, which are independent human rights experts appointed to monitor and advise on specific countries and issues.

In addition to the mechanisms that fall under the Human Rights Council, there are 10 human rights treaty bodies which monitor implementation of the core human rights treaties and protocols in countries that have ratified those treaties. The treaty bodies are separate from the HRC and are made up of independent experts who are selected based on their expertise.¹

The treaty bodies operate separately from the Human Rights Council as they were created by individual treaties that are signed and ratified by member states. Even though they function separately, they sometimes address the same issues. The Human Rights Council can sometimes draw on and reference recommendations that come from the treaty bodies, and treaty bodies can likewise reference and take up recommendations from the Human Rights Council and Special Procedures. Recommendations made by the Human Rights Council can in turn be used in treaty body reviews and quoted in submissions from civil society as part of the UPR process. By utilising and keeping track of all these recommendations, advocates can begin to build a consensus across the different mechanisms and bodies.

Even though they may reference each other, their working cultures are quite different. The Human Rights Council is a peer-review mechanism in which countries review each other’s performance, and their recommendations tend to be more general and even vague. The treaty bodies are made up of individual human rights experts who are usually more independent, and less likely to be influenced by the geopolitical pressures faced by diplomats in member states.

1. UN Office of the High Commissioner for Human Rights (OHCHR). 2021. “Human rights bodies.” Web page. <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (Accessed 17 August 2021).

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All these different mechanisms rely heavily on the small Secretariat of the UN Office of the High Commissioner for Human Rights (OHCHR, or the UN Human Rights Office) in Geneva. Of the various UN agencies, this is the one that is most chronically underfunded compared to its massive mandate. It is led by the UN High Commissioner on Human Rights, who is currently Michele Bachelet Jeria, the former President of Chile and former Director of UN Women. The current Commissioner, Ms. Bachelet, is a medical doctor and is especially interested in gender equality. The Commissioner can issue press releases or give statements on human rights issues. Such examples include giving speeches calling for LGBTQI+ inclusion; and the former High Commissioner, Zeid Ra'ad Al Hussein, called for investigations into human rights violations in the Philippines.² In 2015, the Human Rights Council mandated the High Commissioner to prepare a report on "The impact of the world drug problem on the enjoyment of human rights". States, UN agencies, national human rights institutions, and NGOs all sent submissions, but the final report was not quite strong and has not been especially useful in advocacy on drug policy.³

The OHCHR provides technical assistance to governments, where they usually have an MOU with a work programme. They also do legal research, and they have 85 field offices that monitor human rights in specific places. Among the Love Alliance countries, OHCHR has a country office in Uganda, and human rights advisors in Burkina Faso, Burundi, Kenya, Nigeria, and Zimbabwe.

OHCHR staff, including field advisors and offices, have mostly focused on civil and political rights violations and are usually unfamiliar with the right to health or with the human rights of people who use drugs. Love Alliance partners could liaise with OHCHR staff in their countries in order to share information on human rights developments and help these staff to understand the human rights issues faced by people who use drugs as a result of criminalisation.

In sum, while it has grown and developed quickly, the human rights system is still relatively new, taking into consideration that the founding document, the Universal Declaration of Human Rights (UDHR) only dates to 1948. Human rights norms, mechanisms, and tools continue to evolve and change, with the continual development of new treaties and guidelines.

While acknowledging the hard work done by many to establish and sustain these human rights standards and mechanisms, it is important to also consider the critiques. Human rights have faced numerous justifiable criticisms from the Global South because of the way the system is embedded in and can reinforce historical inequalities established under colonialism.

2. OHCHR. 2016. "Zeid urges investigation into Philippines president's claim to have killed three people." Press release, 20 December. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21052> (Accessed 17 August 2021).
3. OHCHR (2015). *The impact of the world drug problem on the enjoyment of human rights*. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/WorldDrugProblem.aspx> (Accessed 17 August 2021).

B CRITIQUES OF HUMAN RIGHTS

As of 2021, the international human rights system is frankly in crisis: while the 20th century saw the rapid growth of a system of international human rights norms, by the early 2000s, critics foresaw the ‘end times’ of human rights. Many people have raised concerns that the International Criminal Court (ICC), for example, has mostly targeted African leaders in ways that have been criticised as neocolonial.⁴ While it is true that most ICC cases have involved African countries, most of these investigations originated in Africa as well, and some African lawyers have been outspoken in support of the ICC.⁵

Others have pointed out that the human rights system has largely failed to address socioeconomic inequalities.⁶ Some critics say that human rights are no more than a show put on by high-income countries in Geneva.⁷ Certainly the system has become weaker than ever. This is due to underfunding, uneven support by powerful states, and due to the growing role of powerful countries that organise other countries to vote with them in blocs on the Human Rights Council to prevent effective action.

At the same time, while the human rights ‘show in Geneva’ may be unimpressive to some, international civil society networks rely on human rights more than ever in their mobilisation and advocacy, especially in health. Many scholars have noted how human rights norms are increasingly ‘vernacularised’ or localised, for instance, by LGBTQI+ activists who used human rights to build strong peer networks in Myanmar.⁸ Globally, networks of people living with and affected by HIV have mobilised to establish permanent seats and votes in health governance, from national mechanisms that allocate funding, to the governance boards of the Global Fund and UNAIDS. They have also utilised these roles to institutionalise human rights norms and expand the role of human rights in health, including through new commitments in the Global AIDS Strategy and the 2021 UN Political Declaration on HIV.⁹

Today, civil society and community groups that engage with human rights mechanisms are finding it harder than ever to do this work due to closing space in many countries. Many such groups report restrictions on their ability to participate and speak, or face threats and retaliation from government officials and other powerful actors. Since COVID-19, this problem of shrinking space has only gotten worse. With the HR Council going virtual, civil society and communities are getting even lesser time and space to engage.

4. Kamari Clarke, 2019. *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback*. Duke U Press.
5. Emphrem Rugiririza et al. 2016. “African lawyers back the ICC”. 25 October. JusticeInfo.net. <https://www.justiceinfo.net/en/30279-african-lawyers-back-the-icc.html> (Accessed 20 August 2021). 6. Samuel Moyn. 2018. *Not Enough: Human rights in an unequal world*. Cambridge: The Belknap Press of Harvard University Press.
7. Stephen Hopgood. 2013. *The Endtimes of Human Rights*. Cornell U Press.
8. Lynette J. Chua. 2018. *The Politics of Love in Myanmar: LGBT mobilization and human rights as a way of life*. Stanford U Press; De Strooper, T. and S.E. Merry, eds. 2018. *Human Rights Transformation in Practice*. U of Pennsylvania Press.
9. Sara L.M. Davis. 2020. *The Uncounted: Politics of data in global health*. Cambridge U Press.

When power is engaged in many places in a deepening and more intense global struggle over what human rights really mean in practice, these may not be the ‘end times’ for human rights so much as the ‘real times’

Nonetheless, activists are unlikely to ever stop demanding accountability, transparency, non-discrimination, and other human rights principles. In fact, the past few years have seen new spontaneous rights-based movements, such as the #MeToo movement and Black Lives Matter. When power is engaged in many places in a deepening and more intense global struggle over what human rights really mean in practice, these may not be the ‘end times’ for human rights so much as the ‘real times’.¹⁰

This work has been done increasingly in the past 10 years by advocates working on broader human rights implications of the global ‘war on drugs’. Before considering the mechanisms, this report briefly summarises the recent history of engagement on drug policy by activists and scholars.

10. Sara L.M. Davis. 2020. “The persistence of Chinese rights defenders.” Marie-Claire Foblets, Mark Goodale et. al., eds. *Oxford Handbook of Law and Anthropology*. Oxford U Press. DOI: 10.1093/oxfordhb/9780198840534.013.42

C HISTORY OF DRUG POLICY ACTIVISTS' ENGAGEMENT WITH HUMAN RIGHTS MECHANISMS

Beginning in the early 2000s, there has been growing engagement by advocates of human rights-based drug policy with UN and European human rights mechanisms. Initially this began with individual activists, such as Damon Barrett, who traveled to Geneva to lobby states and human rights officials on human rights and drug policy.

Beginning in 2011, Russian activists, including Andrey Rylkov Foundation for Health and Social Justice (“Rylkov Foundation”) and the HIV Legal Network (then the “Canadian HIV/AIDS Legal Network”) made their way to Geneva with the ambition of using human rights mechanisms to catalyse a major change in drug policy in Russia. While their efforts were not wholly successful, they offer valuable lessons.

The Russia strategy developed by Anya Sarang (Rylkov Foundation) and Mikhail Golichenko (HIV Legal Network) was to systematically target the treaty bodies with an overwhelming body of evidence in order to build up a body of favourable treaty body recommendations.

The Russia strategy developed by Anya Sarang (Rylkov Foundation) and Mikhail Golichenko (HIV Legal Network) was to systematically target the treaty bodies with an overwhelming body of evidence in order to build up a body of favourable treaty body recommendations. Thus, this could support impact litigation at the European Court of Human Rights (ECHR, discussed further below), in order to overturn Russia's prohibition of opioid substitution therapy (OST).

The activists began with the Committee on Economic, Social and Cultural Rights (CESCR), which Sarang remembered “didn't know anything about drug policy” in the beginning.¹¹ They worked for years to sensitise CESCR. Sarang, Golichenko, and colleagues organised briefings for the CESCR committee with Human Rights Watch (HRW), and arranged a country visit by two CESCR committee members to Russia for “an impressive set of meetings with communities”.

This approach, especially the country visit, was successful in shifting recommendations at CESCR, according to Sarang: “They came up with legalising OST, funding harm reduction and naloxone programs as part of the right to health.”¹²

In addition to the work with CESCR, the Russian activists engaged with the Committee on Elimination of Discrimination Against Women (CEDAW), the Human Rights Committee (CCPR), the Committee Against Torture (CAT), the Committee on the Rights of Persons with Disabilities (CRPD), the Special Rapporteurs, the Working Group on

11. Zoom interview with Anya Sarang, Andriy Rylkov Foundation, Russia, 1 September 2021.

12. Interview with Sarang, 1 September.

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Arbitrary Detention (WGAD), and the UPR process, by lobbying countries, committee members, and bringing Russian key populations to Geneva to testify in person.

This hard work gradually began to have an impact, leading to a gradual shift in recommendations from the treaty bodies. However, using the recommendations at national level for advocacy proved very challenging in Russia. Rylkov Foundation began national-level advocacy by putting the CESCRC recommendations on their website. The website was immediately shut down for promotion of OST.

Rylkov Foundation then wrote to the President of Russia – as guarantor of the Constitution, which states that international human rights law is above Russian law – in order to share the treaty body recommendations and ask him for action. This letter was forwarded to the Ministry of Health, which sent a dismissive answer.

Rylkov Foundation then sued the president. This effort that also was unsuccessful. The foundation then wrote to a national ombudsman, who did not reply. “At the local level, it was difficult to see how to do anything,” Sarang remembered.¹³ “Russia is a tough case and not willing to listen.”

Nonetheless, she noted, other countries might be able to use this strategy for a better effect. She noted that many other regional networks and regional projects in Eurasia now have plans to write shadow reports and engage with the treaty bodies. Sarang said:

By working systematically with all the UN treaty bodies, we can systematically document violations of human rights, build the capacity of the treaty body members, and build our capacity for the future [...] In my opinion, it builds up slowly.¹⁴

While the Russian and other Eastern European and Central Asian activists began to step up their engagement with the human rights mechanisms, international drug policy NGOs have also engaged in recent years. This had resulted in some significant outcomes. One such example most recently was an important study by the WGAD on arbitrary detention and drug policies, discussed further below.

Ann Fordham argued that engaging with the human rights mechanisms is “about UN system-wide coherence”, and explained:

We have complete discordance between drug control and health and human rights outcomes. But [through engaging with human rights mechanisms], we’ve seen real progress in [...] talk about the human rights implications of drug control [...] What we’re trying to do is build up the case.¹⁵

13. Interview with Sarang, 1 September

14. Ibid.

15. Telephone interview with Ann Fordham, IDPC, UK, 1 September 2021.

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In general, those interviewed for this paper agreed that it is rare to see a UN human rights recommendation leading to an immediate change in laws or policies at the national level. Instead, human rights mechanisms can be the first to clarify standards that become a new norm and can then be used in advocacy at global and national levels. Advocates ensure these gradually get taken up and adopted more widely by other UN agencies, and eventually member states as well.

As Giada Girelli of Harm Reduction International (HRI) put it:

Anand Grover did a report on drugs and health when he was Special Rapporteur in 2012, and we use it a lot – in submissions to the UN, when we engage with national human rights institutions, prevention mechanisms, and when we lobby for harm reduction in prisons.

For this reason, it is imperative to have a long-term plan for advocacy to prepare for UN human rights engagement, followed by an intensive period of advocacy to ensure a certain recommendation gets in, and then followed up at the national level. These are all absolutely key to moving change from Geneva to the country.

This, she pointed out, has sometimes led to changes in prison policies – but only where there has been sustained advocacy at the national level that repeatedly emphasised human rights standards around prisons. For this reason, it is imperative to have a long-term plan for advocacy to prepare for UN human rights engagement, followed by an intensive period of advocacy to ensure a certain recommendation gets in, and then followed up at the national level. These are all absolutely key to moving change from Geneva to the country.

This will be especially crucial to consider in the first mechanism considered in this report – which is the International Criminal Court – as a landmark human rights investigation into crimes against humanity affecting people who use drugs gets underway.

2.0 HUMAN RIGHTS MECHANISMS: THE INTERNATIONAL CRIMINAL COURT

The ICC was established in 2002 based on a treaty called the Rome Statute. The ICC has no structural relationship to the UN Human Rights Council or treaty bodies, though it can be informed by their recommendations and their interpretations of human rights law. The ICC headquarters are in the Hague, the Netherlands.

In June 2021, the Prosecutor of the ICC completed her preliminary examination of allegations of the crime against humanity committed in the context of the war on drugs in the Philippines; particularly, of murder during 1 July 2016 and 16 March 2019 in the context of the national 'war on drugs'.¹⁶ Finding that there was evidence of this crime, the Prosecutor requested judicial approval to proceed with a formal investigation.¹⁷

This is a landmark human rights case which the Philippines government has actively resisted. If the case does go forward, and the ICC prosecutor has indicated it will, it could have significant and ongoing implications for the global movement for human rights and drug policy for years to come. This will also be an important opportunity to launch a broader public discussion about the rights of people who use drugs and the failure of the global 'war on drugs'. The case could eventually lead to arrest, conviction, and imprisonment of senior government officials, perhaps even the President of the Philippines.

The long ICC process can stretch on for years. It normally begins with a preliminary examination of the evidence, then the request for authorisation to initiate a full investigation. This can include issuing arrest warrants and/or summons to appear. Assuming the suspect is arrested or does appear at the pre-trial stage, the judge confirms the suspect's identity and understanding of the charges, and then decides whether there is sufficient evidence to go to trial.

The trial takes place before three judges, who consider the evidence and issue a verdict. The verdict can include imprisonment of up to 30 years, or exceptionally, a life sentence. Sentences are enforced in countries that have agreed to enforce ICC sentences. Judges can also order reparations for the victims. The Prosecutor and Defense both have the right to appeal the verdict.¹⁸

The Rome Statute sets out the scope of the crimes the court can consider, which include genocide, crimes against humanity, war crimes, and the crime of aggres-

16. CPI-ICCC. 2021. "Statement of the Prosecutor, Fatou Bensouda, on her request to open an investigation of the Situation in the Philippines". 14 June.

<https://www.icc-cpi.int/Pages/item.aspx?name=210614-prosecutor-statement-philippines>
(Accessed 3 September 2021).

17. CPI-ICC. 2021. "Preliminary examination: Republic of the Philippines." Web page.

<https://www.icc-cpi.int/philippines> (Accessed 20 August 2021).

18. CPI-ICC. 2021. "How the court works". Web page. <https://www.icc-cpi.int/about/how-the-court-works>
(Accessed 20 August 2021).

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sion by one state against another state.¹⁹ Crimes against humanity are acts committed as part of a widespread and systematic attack directed against civilians. As defined under the Rome Statute, this includes murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution against a group based on prohibited grounds, enforced disappearance, apartheid, and other inhumane acts.²⁰

Victims do have the rights to participate in ICC trials. As the investigation and trial proceed, the ICC will announce an applications process for those who wish to testify, seek legal representation, or seek reparations.²¹ There are ongoing efforts to strengthen victim participation in the court proceedings, and debate about how best to protect and support victims to access justice at the ICC.²²

Unfortunately, the ICC does not have a strong track record of speedy action or successful convictions. Since 2002, there have been nearly 30 cases before the court, resulting in 10 convictions and 4 acquittals. For example, among Love Alliance countries, the ICC currently has pending investigations in Uganda (for crimes alleged during the war with the Love Resistance Army), and Burundi (for crimes allegedly committed during 2015-17). A preliminary examination of the conflict with Boko Haram is also underway in Nigeria.

Witness tampering, threats, and even alleged disappearance have been an ongoing issue with some of these cases. The case of Kenya is especially instructive, as it is another case where the ICC pursued criminal charges against a sitting president and vice president. After years of advocacy by victims and survivors in Kenya, the charges of crimes against humanity against Kenyan President Uhuru Kenyatta and Deputy President William Ruto for orchestrating election-related ethnic violence, including sexual violence and hundreds of deaths, were withdrawn in 2014 due to lack of sufficient evidence. Critics alleged that this was due to bribery and witness intimidation by Kenyan officials.²³ Prosecutors and victims continue their efforts to bring senior Kenyan politicians to justice at the ICC, including through efforts to prosecute witness tampering.²⁴

Nonetheless, the president was re-elected during this process. The withdrawal of charges against the Kenyan president signals to his peers that silencing witnesses can be effective.

19. CPI-ICC. 1998. *Rome Statute of the International Criminal Court*. A/CONF.183/9. Entered into force 2002. <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

20. *Rome Statute*, article 7.

21. CPI-ICC. 2021. "Victims". Web page. <https://www.icc-cpi.int/about/victims> (Accessed 3 September 2021).

22. REDRESS. 2008. "Victims and the ICC: Still room for improvement". Paper prepared for the 7th Assembly of States Parties, The Hague, 14-22 November. <https://redress.org/wp-content/uploads/2018/01/Nov-08-Victims-and-the-ICC.pdf> (Accessed 3 September 2021).

23. Amnesty International. 2016. "Kenya: Ruto and Sang decision must not derail efforts to ensure justice for victims." Press release, 5 April. <https://www.amnesty.org/en/latest/press-release/2016/04/kenya-ruto-and-sang-decision-must-not-derail-efforts-to-ensure-justice-for-victims/> (Accessed 20 August 2021).

24. Walter Menya. 2021. "Kenya: ICC witness tampering – It's Paul Gicheru vs. witnesses." *Daily Nation*, 11 April. <https://allafrica.com/stories/202104120138.html> (Accessed 20 August 2021).

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Drug user activists are currently working with human rights lawyers in the Philippines to gather testimony from victims, despite their real concerns about the security risks. These activists may be in the first step of a process that takes many years. Their work gathering testimony for the ICC now clearly places them in the category of human rights defenders. The Special Rapporteur on the situation of human rights defenders, currently Ms. Mary Lawlor, monitors and reports to the Human Rights Council and the General Assembly on the challenges faced by rights defenders (working with Special Rapporteurs is discussed in more detail below).²⁵ Filipino human rights defenders may need ongoing moral, psychosocial, strategic, and financial support from peers and international supporters in the years ahead. Individuals may experience retaliatory threats, violence, arrests, or disappearance.

Considering this, international allies may want to come together to establish a global network for advocacy in support of the work of activists in the Philippines. If the investigation goes forward, in addition to needs for emergency support to rights defenders, the case could also be an important positive opportunity for INPUD and allies to engage in advocacy and media discussions about the failed global war on drugs.

If they have not already done so, allies should also put an emergency plan in place with Filipino rights defenders. The plan could include about whether and how to liaise with family members if the activist is arrested or disappeared; whether and when to speak about the individual to international media; whether and when to submit formal complaints with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the Right to Health on individual cases of arrest or disappearance; and even a plan and an emergency fund to support individuals to find safe haven in another part of the country or another country.²⁶

An emergency response dossier for individual activists could include:

- Biographical information
- Contacts for immediate family
- Any needs for medical care or medication
- Passport information and ID number
- A photograph
- Emergency contacts for any potential allies in the government who can advocate internally
- Links to any publications or articles about the individual, as evidence of their record doing valuable work on the rights of people who use drugs

If an individual is arrested or disappeared, their spouse and/or children could also be at risk of threats and intimidation. They might also need emergency relocation

25. OHCHR. 2021. "Special Rapporteur on the situation of human rights defenders". Web page. <https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx> (Accessed 20 August 2021).

26. For example, during the Beijing Olympics in 2008, as the government began to detain numerous activists, Asia Catalyst organised 8 'summer visiting fellowships' for key Chinese AIDS activists and rights lawyers to place them at AIDS NGOs or law firms in other parts of the country and in other countries, with funding from AIDS Funds. When the Olympics was over, the activists went home and were able to continue their work.

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support. Those family members sometimes become important voices and champions for justice and accountability in their own right.

The case will be a landmark, not only for the Philippines, but for many other countries in the future which are now just at the stage of beginning to document violations systematically.

For this reason, it will be critical to have a secure archive of documentation. This is so that if a website is taken down in one country, the treasure trove of treaty body recommendations, briefing papers, and cases is preserved to enable future learning and future efforts to ensure accountability.

INPUD can learn from organisations that have historically worked with victims to access justice at the ICC in order to learn ways to engage with ICC and to help people who use drugs in the Philippines in the years to come. Examples of such organisations include HRW, REDRESS, and national human rights activists in countries such as Central African Republic, Cote d'Ivoire, DRC, Kenya, Libya, Sudan, and Uganda who have supported victims in those countries.

Engagement with the ICC is a new experience for health and human rights activists, who have never had a related case before the ICC. Hence discussing the case with UNAIDS, UNDP, and UNODC would also be important, to ensure the case is on their radar and that they are prepared to support as needed.

Health and human rights activists have more experience engaging with the UN Human Rights Council and the human rights treaty bodies, as well as the regional human rights mechanisms. These are discussed in more detail in the next sections.

A RECOMMENDATIONS ON THE INTERNATIONAL CRIMINAL COURT

- 1.** Consider establishing a global coalition to support people who use drugs in the Philippines and the process underway at the ICC, through:
 - a.** Coordinating messaging, media work, and publications to use the ICC investigation to promote a global dialogue about human rights and drug policy by INPUD members and other allies;
 - b.** Developing emergency plans and dossiers for individual drug user activists and their families, in case of retaliation;
 - c.** Establishing an emergency fund for drug user human rights defenders, to support legal aid and/or emergency relocation; and
 - d.** Ensuring UNAIDS, UNDP, and UNODC are following the process at the ICC and ready to engage as needed, including on urgent actions.
- 2.** Consult with organisations that have historically engaged with the ICC, as well as African rights activists with direct experience of cases, to think through how best to engage and how to support drug user participation in any future trial.



3.0 THE HUMAN RIGHTS COUNCIL (HRC)

The UN HRC is a charter-based intergovernmental body subsidiary to the General Assembly. The 47 members of the HRC represent member states and are elected on a regional basis by the UN General Assembly to serve staggered three-year terms (unfortunately, none of the 10 Love Alliance countries are currently members of the HRC).²⁷ The HRC meets three times a year – in March, June, and September. The HRC receives Secretariat support from OHCHR in Geneva, Switzerland.

Its subsidiary bodies include:

- The UPR
- An advisory committee, a kind of ‘think tank’ for the HRC
- A complaints procedure for individual and group cases
- Special Procedures – experts and groups with mandates to focus on the situation of human rights in specific countries, as well as on specific cross-cutting thematic human rights issues

In addition, the HRC can pass resolutions that can set out a view of a problem, mandate investigations into specific issues or countries (for instance, into extrajudicial executions in the Philippines), or call for consultations on specific issues (for instance, on HIV and human rights). Lastly, the three yearly meetings of the HRC normally (pre-COVID) attract many people to Geneva, offering an opportunity to hold side events on specific issues.

Among the diverse functions of the Human Rights Council, three in particular – the UPR, the Special Procedures, and Human Rights Council resolutions – are explored further below, before we turn to the treaty bodies.

27. General Assembly. 2006. Resolution adopted by the General Assembly on 15 March 2006, A/RES/60/251. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement>

HUMAN RIGHTS COUNCIL	HUMAN RIGHTS TREATY BODIES
Universal Periodic Review	Committee on the Elimination of Racial Discrimination (CERD)
Special Procedures: Special Rapporteurs, special experts, working groups	Committee on Economic, Social and Cultural Rights (CESCR)
Human Rights Council Complaints Procedure	Human Rights Committee
Human Rights Council resolutions	Committee on the Elimination of Discrimination Against Women (CEDAW)
	Committee Against Torture (CAT)
	Committee on the Rights of the Child (CRC)
	Committee on Migrant Workers (CMW)
	Subcommittee on Prevention of Torture (SPT)
	Committee on the Rights of Persons with Disabilities (CRPD)
	Committee on Enforced Disappearances (CED)

For these human rights mechanisms, civil society advocates have a four-step process:

1. Make a formal submission to the review (usually drawing on overwhelming evidence of human rights violations and previous recommendations from past reviews);
2. Engage with the body doing the review, through lobbying members of the committee or council that does the review, briefing them, writing to them, holding side events, speaking to media, and making short oral interventions during the review (if given an opportunity) to get your input taken up;
3. After the review, follow up on recommendations at the national level to ensure they are implemented; and
4. Repeat.

A UNIVERSAL PERIODIC REVIEW

The most important process and function of the HRC is the Universal Periodic Review. In this human rights monitoring process, established in 2006, UN member states review each other's human rights situation every 4-5 years.²⁸ This is an important process because it involves member states reviewing one another's performance, and it includes national civil society and community engagement by design. However, the process is long and unpredictable. Moreover, UPR recommendations are not legally binding unlike the recommendations from the treaty bodies, which will be discussed later.

Through its member organisations and networks, INPUD could opt to focus on the UPR process as a tool for engagement and mobilisation. The process will require significant advanced preparation, but could also significantly strengthen national-level networks and advocacy.

For each country, the process is the same:

1. **Preparing for the review:** At country level, national stakeholders, including the government, civil society, national human rights institutions, and UN agencies and bodies submit national reports. These provide information about the human rights situation in the country under review, and actions taken by the State to improve it since the previous review 4.5 years earlier. Ideally, Parliamentarians should be engaged in the review process and follow up to ensure implementation of the recommendations. The State under review is encouraged to conduct broad consultations and to ensure its report reflects the priorities and perspectives of a wide range of stakeholders, including human rights experts and civil society. At this time, about six months before the review, civil society groups can also submit 'shadow reports' with their own assessment of human rights in the country.
2. **The review** – This is conducted in Geneva by the UPR Working Group, comprised of UN member states. They review the following:
 - a. *The national report*, submitted by the State under review based on its consultations.
 - b. *UN information*, compiled by OHCHR using reports from human rights treaty bodies, Special Procedures, comments by the State under review, and other UN documents.
 - c. A summary of *information submitted by stakeholders*, coming from national and regional civil society organisations and national human rights institutions.

Using this information, the UPR Working Group engages in dialogue with the State under review, asking questions and making recommendations. Civil society may have opportunities to speak during this process. The State under review may also make voluntary commitments to actions that it intends to take.

28. Anne Lips, David Ruiz Villafranca et. al. *Making the Universal Periodic Review Work for People who Use Drugs*. IDPC, HRI, Bridging the Gaps and PITCH.

3. The outcomes of the review include:

- a. The UN member states that review the State under review develop a set of recommendations
- b. The State under review's responds to each recommendation ("supported", meaning they commit to acting on it, or "noted", meaning they do not)
- c. Any other voluntary commitments expressed by the State under review during the review process.²⁹

4. Follow up on implementation – After the review is done, states have 4-5 years to implement the recommendations. Civil society organisations should be vigilant during this period and continue to engage to advocate for implementation. There is an opportunity for civil society to submit a mid-term UPR report on the realities of implementation in the country.

This process builds civil society and community engagement into its design, and there are several levels of engagement that INPUD members could consider.³⁰

Communities can engage with the government-led consultation process, encouraging the government to make this consultation as broad and inclusive as possible, and thus input into the national report.

If the national report does not adequately reflect community views, or if the national process is hostile to community input, civil society and community organisations can submit shadow reports to be included in the stakeholder information (ideally by coming together as a large, powerful coalition), and can also liaise with the UN country team to ask them to include these recommendations in their sharing with OHCHR. Civil society organisations need to register through the online portal of the OHCHR in order to make a submission. They do not need to be legally registered in the country, but they do need to get accreditation with OHCHR in order to participate in person in meetings during the Council.³¹

Through public awareness-raising campaigns, civil society can use the UPR to mobilise attention and discussion of progress on the previous recommendations. This could include holding events at home, and/or side events in Geneva during the Human Rights Council meeting that bring diplomats and UN partners into the room.

When they are good, the UPR recommendations can be tools for advocacy, including lobbying the UN to ask them to support implementation of the recommendations, advocating for government to submit a midterm UPR report, lobbying Parliament to follow up on implementation, and encouraging national human rights institutions to brief Parliament on progress (or lack of progress). Civil society groups can organise webinars and live social media broadcasts during the review process, informing media about the review process and the issues under discussion.

29. Bridging the Gaps and PITCH. 2018. Making the Universal Periodic Review work for HIV: An analysis of the first and second cycles. Report. <https://aidsfonds.org/resource/making-the-universal-periodic-review-work-for-hiv> (Accessed 19 August 2021).

30. Deadlines for country submissions, tips for engagement and matrices of recommendations are on this page: OHCHR. 2021. "3rd UPR cycle: Contributions and participation of 'other stakeholders' in the UPR". <https://www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx> (Accessed 19 August 2021).

31. More information is available at OHCHR's web page for civil society, here <https://www.ohchr.org/EN/AboutUs/Pages/CivilSociety.aspx>

B TIPS FOR ENGAGING WITH THE UPR

In engaging with the Human Rights Council processes, activists consulted for this report shared the following tips:

- Six months before the UPR, submit the country submissions; ideally a submission is on behalf of a coalition of groups
- At the same time, develop a one-pager with the top five recommendations for a handful of countries that will be reviewed, with links to annexes for additional information
- Send this submission to all the delegations in Geneva (the emails can be gathered from the UNOG blue book)
- Bear in mind that the talking points are drafted in national capitals at least 5-6 weeks before the UPR session, so this is the time to engage with them to get them to take up recommendations
- Be strategic about which countries to focus on – small countries, and/or countries with an interest in your issue (e.g., health) in order to get the recommendations taken up.

The timetable of countries going through the 40th session of the UPR is at: <https://www.ohchr.org/EN/hrbodies/upr/pages/uprsessions.aspx> (see Annex 2). The 40th session takes place on 24 January until 4 February 2022, and will include **Uganda** and **Zimbabwe**. It is now probably too late to hold a consultation and submit a shadow report in either country, but the UPR itself is an opportunity to raise drug user issues, including through webinars and media work at national levels.

C HOW USEFUL IS THE UPR FOR PEOPLE WHO USE DRUGS?

In the past, because there have not been many organisations engaging on drug user rights (or other key populations rights) in the UPR, there have been relatively few recommendations on drug user rights.

According to a review of HIV-related recommendations in the first two cycles of the UPR (2008-16), key populations issues have historically been avoided due to taboos. A related review of the recommendations relevant to people who use drugs in the first three cycles (2008-17) found only 129 recommendations (0.2%) related to drugs, drug policy, and drug control. However, many were not useful for drug-user-led advocacy: for example, Egypt recommended that China, Vietnam, and Malaysia continue to apply the death penalty in criminal justice.³² Many of the recommendations were general. France, Portugal, Pakistan, Colombia, and Thailand took a right-to-health approach to drugs, including recommendations to end compulsory rehabilitation and ensure access to medical care for people who use drugs.³³

This overall absence of recommendations and engagement in the past means that INPUD and its members could have an opportunity to make an impact through systematic engagement in the future. In practice, however, the UPR process is not friendly to these issues.

Nepal is one of the few countries in which communities of people who use drugs and harm reduction groups mobilised to engage in the UPR. In 2020, Nepalese harm reduction and drug user groups tried to engage with national civil society groups to contribute to the UPR process. They however found that the groups were more interested in raising the needs of persons with disabilities (PWD), women, and children, and were not interested in drugs. Instead, the Nepalese activists formed their own consortium to develop a submission. They recruited two consultants to support the process: a national consultant with a background in harm reduction, and an Indian human rights lawyer. They held focus group discussions (virtually due to COVID-19), and accumulated evidence to develop their recommendations, summarised in a two-page joint submission (see annex 2).³⁴ Bishnu Fueal Sharma of Recovering Nepal was able to make a short video intervention on behalf of the consortium during the UPR process, which was shared on Facebook.³⁵

32. IDPC, HRI, Bridging the Gaps, PITCH. 2018. *Making the Universal Periodic Review work for people who use drugs: Learning from the cycles completed between 2008 and 2017*. Report. <https://www.hri.global/universal-periodic-review-people-who-use-drugs> (Accessed 19 August 2021), p. 10.

33. IDPC et al, Making the UPR work for people who use drugs, p. 11.

34. Coalition of NGOs on Human Rights and Drug Policies for UPR-Nepal. 2020. "Nepal – Universal Periodic Review – 3rd Cycle, 37th [sic] session, January-February 2021. Joint Submission by a Coalition of NGOs on Human Rights and Drug Policies for UPR-Nepal." PDF. <https://idpc.net/publications/2020/12/joint-submission-by-a-coalition-of-ngos-on-human-rights-and-drug-policies-for-upr> (Accessed 19 August 2021).

35. IDPC. 2021. "Human rights and people who use drugs in Nepal: Statement at the 47th session of the Human Rights Council". https://idpc.net/alerts/2021/07/human-rights-and-people-who-use-drugs-in-nepal-statement-at-the-47th-session-of-the-human-rights-council?fbclid=IwAR2KW0Qfz6ZhuGhWyfIESwnpwkU_g44nPCTN1OZ9ZkgCINUpN_1BQR-r0fSc (Accessed 19 August 2021).

OPPORTUNITIES TO ENGAGE IN HUMAN RIGHTS ADVOCACY FOR THE INTERNATIONAL NETWORK OF PEOPLE WHO USE DRUGS (INPUD)

After the video of his remarks in the UPR was shared, Sharma experienced pressure from some who were upset with his allegations of abuse in rehabilitation centres, but said the arguments ultimately led to better understanding. He said:

We got very good comments from outside the country, but inside the country it was not acceptable [...] It was emotional blackmailing, one of my board members said, "I will boycott Recovering Nepal." But it's the reality, I will talk. If I don't talk, who will talk? [...] Later on, [he] said okay. They had to understand I'm talking on behalf of people who use drugs. Now I'm dealing with harassment cases in the rehab centre, and I will call him and tell him, "You deal with this."³⁶

Despite the pressure (which is not unusual for activists who engage with UN human rights mechanisms), Sharma expressed real enthusiasm for the experience of engaging with the UPR. According to him, it had been an important opportunity to mobilise and unite civil society and communities through the process, to internationalise their issues, and to build connections with other South Asian activists who learned about each other's experiences and challenges.

However, it is currently unclear to either the Nepalese activists or IDPC whether any of the recommendations made by the consortium were reflected in recommendations to Nepal by other UN member states. A matrix of published recommendations on the OHCHR website does not include them.

In sum, the UPR process is important to engage with. It offers real opportunities for strengthening civil society and community solidarity and expertise, improving visibility of the issues at the national level, and forging larger coalitions with traditional human rights groups.

Unfortunately, the UPR also requires significant resources. This includes months of training and coaching, and ongoing coordination of national and global-level peer networks with human rights allies in Geneva in order to maximise the impact of domestic mobilisation. Even then, UPR advocacy can be unpredictable in terms of the results. This is due to politics among member states on the HRC and their overall lack of sophistication about drug user concerns (member state representatives on the HRC are not usually human rights experts).

It might be best therefore for INPUD to focus energies on treaty bodies and Special Procedures, where the results are likely to be better. Alternatively, as part of a longer-term strategy of national-level community mobilisation aimed at building stronger relationships with potential allies in the country, INPUD may also wish to review the list of countries coming up for review when the fourth cycle begins. This is so to see if any Love Alliance countries are scheduled and in order to identify one or two countries where peer-led networks are strong, and to support them to mobilise around the UPR.

36. Telephone interview with Bishnu Fueal Sharma, 17 August 2021.

OPPORTUNITIES TO ENGAGE IN HUMAN RIGHTS ADVOCACY FOR THE INTERNATIONAL NETWORK OF PEOPLE WHO USE DRUGS (INPUD)

In the shorter term, as discussed below, engagement with the Special Procedures and human rights treaty bodies might require less effort and deliver quicker results. Ann Fordham said, “The biggest bang for the buck is probably Special Procedures and treaty bodies,” but noted as well:

The UPR is a chance to engage national organisations and talk about what’s happening in your country. The UPR work really needs to be done in partnership.³⁷



37. Telephone interview with Ann Fordham, IDPC, UK, 1 September 2021.

D SPECIAL PROCEDURES AND COMPLAINTS

The Human Rights Council has numerous Special Procedures who are independent experts focusing on specific human rights issues. These Special Procedures report and advise on these issues and countries, including 44 thematic issues and 11 countries.³⁸ They include Special Rapporteurs (individual experts), other independent experts, working groups, and more.

The 11 Special Procedure country mandates include Belarus, Cambodia, Central African Republic, Democratic People's Republic of Korea, Eritrea, Iran, Myanmar, occupied Palestinian territories, Somalia, and Syria.

The 44 thematic mandates include the Working Group on Arbitrary Detention, the Special Rapporteur on the Right to Physical and Mental Health, and Special Rapporteurs, experts or working groups on such topics as business and human rights, the right to development, the situation of human rights defenders, and more. A full list of mandates is provided in the Resources section.

Special Procedures can undertake country visits to assess progress on the issue on which they focus. They can send official communications to the government about individual cases, conduct annual thematic studies based on consultation with diverse stakeholders (including member states, UN agencies, civil society, and other experts), help to develop and articulate specific human rights standards, and advocate publicly on their issues.

Often, Special Procedures are the first to articulate a specific human rights standard and present it to the Human Rights Council or the General Assembly through a report. These standards may be taken up more widely by UN agencies and member states.

When a Special Procedure is working on a report, they invite submissions from civil society and community groups on the topic of the report and may also conduct online surveys. They often invite civil society and community experts to participate in interactive dialogues, which may be in-person or virtual, and usually take place annually. An example of a general call for input on the issue of violence against women can be seen here: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Celebrating25yearsMandate.aspx>

38. A full list of Special Procedures thematic and country mandates and contact information is online at: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM>

E TIPS FOR ENGAGING WITH SPECIAL PROCEDURES

Special Rapporteurs have unfunded mandates, and many must juggle their responsibilities with other jobs, so they rely heavily on experts in the field who share submissions (formally or informally) to help them develop an analysis. INPUD and its members can begin to develop a collaborative relationship of this kind with a Special Rapporteur by writing to share information about a country where the Special Rapporteur plans to travel, or complaints about individual cases relevant to the mandate – for instance, cases of retaliation against human rights defenders.

According to Rhona Smith, former Special Rapporteur on Cambodia:

If you and your colleagues know of people who are victims of violations, there is an option of processing [a complaint] through the special procedures. We need full consent from the individual/group but then can send allegation letters or urgent appeals. Note that these become public after a few months, along with any response from the government. These cases can be (and randomly are) picked up (when public) by NGOs, CSOs, states in universal periodic review, and treaty bodies. There are very few overall so can be worth trying if there is a suitable lead who will fully consent and is not at risk of serious reprisals.³⁹

To communicate about a case with a special procedure, activists can use an online form at: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>. Through sharing these cases, civil society and community groups can begin to develop a relationship with a Special Rapporteur as a trusted source. Smith said, “If you hear nothing, it is worth following up directly with the mandate holders, as these forms all go through the desk officers and assistants in Geneva in the first instance. Mandate holders can directly initiate them too.”

Smith noted that the Human Rights Council complaints procedure is another option for individual cases, and submissions of individual complaints to the HRC can be made here: <https://spsubmission.ohchr.org/>. However, she noted that complaints to the HRC, as opposed to the Special Procedures, are not as likely to progress unless there is broad evidence of systematic rights infringements.

Special Procedures also engage in country visits to investigate a specific issue, but they must seek permission for these visits from the state. They must negotiate the terms of the visit in order to meet a high standard of independence. Their demands follow a strict set of guidelines that ensure the visit is not interfered with or influenced. This can include the right to make spontaneous and unannounced visits to prisons and detention centers, the right to meet human rights defenders (activists) confidentially, and other requirements that some states are unwilling to agree to.

39. Interview with Rhona Smith, former UN Special Rapporteur on Cambodia, 11 February 2019.

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Smith noted:

If your contacts have specific information on a state and the relevant SP is visiting that state, then directly contact the mandate holder with any information s/he may find useful. Some regularly call for information before a visit – these calls are usually on the relevant SP page. Others call for information to inform reports.

It is often challenging for Special Procedures to know who the right people are to consult in a given country, especially if they have not worked there previously. As a rule, they are happy to hear from anyone with expertise on a country, especially if they can help to arrange meetings or visits. An example of a call for information before a country visit can be seen here – the Special Rapporteur on Housing’s announcement of her plan to investigate housing rights in New Zealand: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25528&LangID=E>.

This site links to the potential forthcoming country visits of all mandate holders: <https://spinternet.ohchr.org/Forthcomingcountryvisits.aspx>. Of the Love Alliance countries, Burundi, Kenya, Mozambique, Nigeria and South Africa have standing invitations to Special Procedures, meaning that they will accept requests to visit from any of them.⁴⁰

Smith cautioned, though:

Just because [a country visit] is accepted [by the state] does not mean it happens. Most mandates only have funding for two visits a year, and thematic mandates often seek permission for several visits, and then go with what they can thereafter.

40. Full list available at: <https://spinternet.ohchr.org/StandingInvitations.aspx?lang=en>

F HOW USEFUL IS ENGAGING WITH SPECIAL PROCEDURES FOR PEOPLE WHO USE DRUGS?

What is the impact of the work of Special Procedures on the ground and in the work of human rights advocates? This can vary quite a bit depending on the Special Procedure and the issue.

For example, in comparing a report from the Special Rapporteur on Torture in 2009 on drugs and a report from the Special Rapporteur on Health on drugs in 2010, they had quite different impacts despite agreeing with each other on the findings. The 2009 report to the Human Rights Council by Manfred Nowak, then a well-known Special Rapporteur on Torture and leading human rights expert, called on UN member states to use a rights-based approach to drug control, and raised specific concerns about abuses in detention, access to harm reduction in detention, compulsory drug treatment, and more.⁴¹ It was widely reported and discussed. However, a report on international drug policy a year earlier by the UN Special Rapporteur on Health, Anand Grover, highlighted the same issues but went a step further and called for decriminalisation of drug use.⁴² Grover's report is more widely referenced and used today, according to Giada Girelli of HRI, who said:

We use that one a lot: we use it in submissions [to human rights mechanisms], we use it when we engage with national human rights institutions, with prevention mechanisms, and when we advocate for harm reduction in prisons [...] It's not clear if [the report itself] changed anything, but it can start to clarify standards for UN agencies.⁴³

After a Special Rapporteur's report comes out, civil society can also use that report as an opportunity to convene. For instance, they can launch events at regional or national levels with policymakers, civil society, and experts in order to introduce the report; invite the Special Rapporteur and others to speak; and discuss concrete plans for implementation.

Special Rapporteurs are sometimes described as 'loose cannons' because they are independent and can take innovative and controversial positions. This means they are more open to taking on new challenges and less likely than more mainstream UN actors (including HRC members) to bend when they experience pushback from member states. Like the previous Special Rapporteurs on the Right to Health, the current mandate holder, Dr. Tlaleng Mofokeng, had also expressed interest in the issues of people who use drugs and other key populations. She had also set out an ambitious and innovative program of work that includes addressing intersectionality, SRHR, decolonisation, and racism in her work on the right to health.

41. Human Rights Council (2011). Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak. A/HRC/10/44. <https://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf> (Accessed 20 August 2021).

42. General Assembly (2010). Report of the Special Rapporteur on Right of Everyone to Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover. A/65/255. https://www.hr-dp.org/files/2015/06/08/GA_Annual_report,_2010.pdf (Accessed 20 August 2021).

43. Zoom interview with Giada Girelli, human rights analyst, Harm Reduction International, 11 August 2021.

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Girelli emphasised that among the many Special Procedures, the Working Group on Arbitrary Detention is also more open to collaborating with civil society in its work on detention and drug policies. As a result of ongoing engagement on a series of studies on drugs, said Girelli:

They are very progressive on drugs, compared to the others. They are open to input from civil society, they talk to everyone, we've had lots of submissions and internal conversations. It's easy to reach out to them, and we hope that their interpretation will prevail over other bodies that are more conservative, such as the Human Rights Council or the Committee Against Torture.

In 2021, the WGAD issued a major study of arbitrary detention and drug policy with robust analysis and recommendations.⁴⁴ The recommendations include calls for decriminalisation of drug use, possession, and acquisition or cultivation for personal use, along with numerous other useful recommendations. Civil society organisations participated in the interactive dialogue to highlight the importance of these recommendations, as well as organising a side event “to discuss its recommendations and its implementation, organised by and featuring local and international civil society and experts, Member States, and the Chair of the Working Group”.⁴⁵

This progress indicates that it would be useful for INPUD and partners to continue to engage with the Special Rapporteur on the Right to Health and the Working Group on Arbitrary Detention.

This progress indicates that it would be useful for INPUD and partners to continue to engage with the Special Rapporteur on the Right to Health and the Working Group on Arbitrary Detention. This is due to their openness, overall sympathy with INPUD positions, and willingness to make strong recommendations on priority issues. The WGAD takes submissions of individual cases, including urgent actions, and conducts country visits. Its ways of working are set out in detail here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf?OpenElement>.

It could also be wise to preemptively reach out and develop a relationship with the Special Rapporteur on the situation of human rights defenders – to meet with her, brief her, and alert her to be aware of the risk of repercussions for drug user activists who engage with the ICC investigation in the Philippines, as well as potentially in other countries where INPUD member networks plan to engage more frequently with human rights mechanisms. The current Special Rapporteur on human rights defenders, Mary Lawlor, had stated that her priorities for the mandate include working with women and marginalised groups who are vulnerable to killing or other retaliation.⁴⁶

44. Human Rights Council. 2021. Arbitrary detention related to drug policies. A/HRC/47/40. https://www.ohchr.org/Documents/Issues/Detention/Call/A_HRC_47_40_AdvanceEditedVersion.pdf.

45. Email communication from Naomi Burke-Shyne, HRI, 22 July 2021.

46. General Assembly. 2020. “Situation of human rights defenders.” A/75/165. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/185/66/PDF/N2018566.pdf?OpenElement> (Accessed 3 September 2021).

G

HUMAN RIGHTS COUNCIL RESOLUTIONS

In addition to its work through the UPR process, complaints, and Special Procedures discussed above, the Human Rights Council as a whole can also pass resolutions mandating reports or consultations on specific issues, or order investigations into human rights violations in specific countries. Resolutions are proposed by member states and can arise (for example) in response to reports from Special Procedures. Civil society groups can advocate for specific resolutions and engage with friendly member states on the draft language.

As one example, in 2020, as a result of ongoing advocacy by many organisations, the Human Rights Council issued a report on the war on drugs in the Philippines that found evidence of “systematic violations, including killings, arbitrary detentions, and vilification of dissent”.

As one example, in 2020, as a result of ongoing advocacy by many organisations, the Human Rights Council issued a report on the war on drugs in the Philippines that found evidence of “systematic violations, including killings, arbitrary detentions, and vilification of dissent”. This then led to consideration by the HRC of a resolution that would have ordered an independent investigation. However, at the last minute, the resolution was replaced with another one that called for “technical assistance and capacity-building”.⁴⁷

14 NGOs, including Amnesty, CIVICUS, HRI, Human Rights Watch (HRW), and the activists from the Philippines, made a statement at the HRC saying that they were “deeply disappointed” and calling the weakened resolution “a collective failure by the States at this Council”. For many, this was further evidence of how compromised the HRC has become, due to the politicking of powerful member states who sit on the HRC and who shield one another from accountability.

However, Ma. Inez Feria, of NoBox in the Philippines, took a more nuanced view about the MOU:

*There has to be accountability. But given the joint programme [to provide technical assistance] now exists, we should see how it can be maximised. There has never been an opportunity to focus on this, couched under human rights. How do we maintain vigilance, how should this be implemented? The devil is in the details.*⁴⁸

47. Human Rights Watch. 2020. “Philippines: Human Rights Council joint NGO statement”. 6 October. <https://www.hrw.org/news/2020/10/06/philippines-human-rights-council-joint-ngo-statement> (Accessed 20 August 2021).

48. Telephone interview with Ma. Inez Feria, NoBox Philippines, 18 August 2021.

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Rather than dismissing the MOU and technical assistance plans as a rotten compromise, she saw this as an important opportunity to push for meaningful community and civil society engagement at the national level, and to push for improved access to treatment that is person-centered and rights-respecting. She also noted that efforts to seek accountability are now potentially moving forward in another venue, at the ICC.

A second example of how an HRC resolution can create opportunities for advocacy is the example of the HRC consultation on human rights in the HIV response in 2019. This consultation was mandated by HRC resolution 38/8 in 2018.⁴⁹ The resolution called for a two-day consultation event, resulting in a report that identified regional and subregional strategies. Speakers in the consultation included the executive director of GNP+, and senior officials from OHCHR, UNAIDS, the World Health Organisation (WHO), the Brazilian government, and the Special Rapporteur on the Right to Health, among others.⁵⁰ Free Space Process engaged with the consultation, helping to propose speakers and developing talking points and submissions. Among the issues discussed were criminalisation, discrimination, gender equality, rights of key populations, and related issues such as whether health aid agencies transitioning from middle-income countries constitute retrogression on the right to health, because it often results in defunding of critical services needed by key populations, such as harm reduction services for people who use drugs.

Participants in the consultation said the event was a good opportunity for HIV activists and community leaders to meet with various Special Rapporteurs and to make a collective formal submission on behalf of the Free Space Process. There was good participation by member states at the beginning of the consultation, although many of the member states left after the opening ceremony. However, there were strong messages from the Special Rapporteur on the Right to Health on decriminalisation, along with submissions from UN partners to the HRC discussion. Unfortunately, the HRC resolution that came out at the end of the consultation was described as weak, due to the maneuvering by conservative member states.

More recently, a Human Rights Council resolution on systemic racism and law enforcement, resulting from a High Commissioner report on systemic racism, included language on the impact of systemic racism on law enforcement processes including drug control, thanks to advocacy and engagement by civil society with the resolution and a related interactive dialogue.⁵¹

49. Human Rights Council resolution 38/8. Human rights in the context of HIV and AIDS. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/221/72/PDF/G1822172.pdf?OpenElement> (Accessed 20 August 2021).

50. OHCHR (2019). "Consultation on human rights in the HIV response". <https://www.ohchr.org/EN/Issues/Pages/HumanRightsAndHIVResponse.aspx> (Accessed 20 August 2021).

51. Email communication from Naomi Burke-Shyne, HRI, 22 July 2021.

H RECOMMENDATIONS ON ENGAGEMENT WITH THE UN HUMAN RIGHTS COUNCIL

1. On the UPR:

- a.** While it is too late to coordinate a shadow report for the UPR for Uganda and Zimbabwe in early 2022, INPUD members in those countries could use the UPR dialogue as a public moment to raise their issues through organising webinars and communicating with the media
- b.** Beyond this, it is not recommended to prioritise UPR engagement, given INPUD's limited time and resources.

2. On the Special Procedures:

- a.** Continue to engage with WGAD to share individual complaints and support country visits;
- b.** Collaborate with WGAD to launch and disseminate their recent report regionally through convening dialogues with member states, UN, civil society, and communities;
- c.** Continue to engage with the UN Special Rapporteur on the Right to Health, sharing individual complaints, briefing her on new and emerging issues related to the right to health, participating in consultations and surveys she conducts, and supporting country visits; and
- d.** Reach out to and brief the UN Special Rapporteur on Human Rights Defenders on the risks related to the ICC investigation in the Philippines, as well as to share individual complaints from other countries where INPUD activists face retaliation for their human rights work.

4.0 HUMAN RIGHTS TREATY BODIES

The human rights treaty bodies operate separately from the Human Rights Council mechanisms discussed above. They are 10 committees made up of independent experts that monitor implementation of the 10 human rights treaties (see chart above for a full list). As with the UPR process, each treaty body has a calendar of countries it reviews, along with a process that includes receiving submissions from the state, civil society, and other experts; raising questions to the state; and developing concluding observations; or recommended actions the state should take in the future before its next review. Unlike the UPR process, though, many of the people reviewing states have expertise on human rights, and the treaty body recommendations are legally binding.

For all these reasons, it may be an effective use of limited resources to engage with the treaty bodies in order to establish new, better norms on rights of people who use drugs.

A ENGAGING WITH THE TREATY BODIES

Like the UPR process, civil society can engage with the human rights treaty bodies by making submissions on the rights that treaty body monitors when a given country is up for review. The submission can be a shadow report and must be grounded in evidence.

According to Leila Swan (HRW), after submitting the shadow report, another effective approach is to write a one-page document with questions and information and send it to the treaty body in advance of the treaty body review. By attending committee meetings in Geneva, she said, it is possible for civil society to make oral interventions during the meeting, to hold separate briefings on thematic issues, and over time to even identify which experts on a given treaty body are interested in which issues, targeting recommendations and questions to that individual.

As an example, the reports of the States parties to be considered by CESCR, as well as other relevant documentation (lists of issues adopted by the pre-sessional working group, the States parties' replies to those issues, the submissions received by the Committee and the Committee's concluding observations) are all posted on the webpage of each session: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR

Due to the COVID-19 pandemic, dialogues with States are webcast live: <http://webtv.un.org/> and participants can register in advance to participate.⁵²

52. CESCR Information Note (2021). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbol-no=INT/CESCR/INF/70%20%28To%20be%20confirmed%29/32740&Lang=en (Accessed 20 August 2021).

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Mikhail Golichenko of the HIV Legal Network, who engaged on developing CESC and CAT recommendations on drug policy to Russia, encouraged INPUD and other key populations-led groups to engage with the treaty bodies. He recommended identifying several countries to target at various committees, and “bombarding them” with shadow reports on the same issue in different countries, because in this way:

You can slowly get the same recommendations for many countries, which can then bring about a big picture, and you can use this to make a larger case – for example, to make a case for decriminalisation at the treaty body.

For instance, he suggested, INPUD could develop talking points that are similar for every country. INPUD could also encourage its members to submit reports, all using these same points, as soon as their country comes up for review. In this way, INPUD could help to develop a new standard across multiple countries reviewed by a certain treaty body, which can then be taken up more widely across the UN.

Golichenko especially recommended focusing on treaty body reviews of small countries, because they may not have many NGOs lobbying them:

With a small country, you can have a one-hour briefing and you might be the only one there. With Uzbekistan, I was one of the only people at the treaty body meeting, and I got to spend an hour with them talking about OST in general. Once you establish a standard with a small country, you can apply it to a larger country.⁵³

Other activists reported similar experiences; for instance, Svitlana Moroz recalled a long engagement with a representative from Azerbaijan which was decisive in progressing recommendations at CESC.

Overall, those consulted for this report recommended focusing on CESC, CEDAW, the Human Rights Committee, CRPD, WGAD, and the Special Rapporteurs. CAT was generally viewed as unsympathetic.

⁵³ Telephone interview with Mikhail Golichenko, HIV Legal Network, 5 February 2019.

B HOW USEFUL IS ENGAGING WITH TREATY BODIES FOR PEOPLE WHO USE DRUGS?

In Ukraine, women who use drugs joined with women living with HIV, sex workers, and lesbians, bisexual, and transgender women to form a coalition and engage with CEDAW in 2016 and 2020 (see Annex 3). The group of four focal points collected data on rights violations using a community-driven process, submitted shadow reports, and were able to participate in person, with Svitlana Moroz speaking on behalf of all four constituencies. The group also participated in briefings for committee members to advance their recommendations. They did hard work to sensitise committee members to their issues. The first session had poor results, said Moroz, with “almost zero recommendations” taken up. “We were disappointed and upset” with the lack of impact, said Moroz.⁵⁴ However, the process of engagement led them to form stronger bonds with other women’s organisations from Ukraine, and to participate in women’s marches, coordinate at a national level on women’s rights, and “we developed a feminist optic, a gendered lens, and promoted more integration of HIV issues into feminism and work on gender-based violence”. By the 2020 session of CEDAW, the group found the atmosphere at the committee had changed. They had many opportunities to dialogue in Geneva with sympathetic committee members, and they were able to get strong recommendations for the Ukraine government.

Similar to anything else that comes out of UN human rights mechanisms, the recommendations that come out of human rights treaty body reviews are unlikely to spark automatic changes at the national level. However, because they are stronger and more specific recommendations than those that come out of UPR reviews, they are better tools for advocacy in the country. Advocates in countries should plan to engage in three phases of the review: before the treaty body review to develop the recommendation, during the treaty body review to get the recommendation included, and afterwards in order to promote and use the treaty body recommendation in national advocacy.

The treaty body recommendation can also be shared with UN agencies to inform their guidelines. Those agencies can use them as well in their own communications with member states, as well as in developing their technical guidance and joint activities with member states.

54. Zoom interview with Svitlana Moroz, Eurasian Women’s Network on AIDS, Ukraine, 1 September 2021.

C RECOMMENDATIONS ON ENGAGING WITH THE TREATY BODIES

- 1.** Prioritise engagement with UN human rights treaty bodies, especially CESCR, the Human Rights Committee, CEDAW and potentially also CRPD, to:
 - a.** Develop a set of recommendations that apply to multiple countries, and coordinate INPUD member submissions to treaty bodies to ensure consistent recommendations coming up in multiple countries;
 - b.** Prepare INPUD members to have an advocacy plan, in order to ensure concluding observations from the treaty body are pursued at the national level; and
 - c.** Consider organising a thematic briefing for one of the treaty bodies when they meet in Geneva (e.g., a thematic briefing on women who use drugs for CEDAW, with examples or speakers from the countries they are reviewing in that session).



5.0 REGIONAL HUMAN RIGHTS MECHANISMS

Regional human rights mechanisms include committees and courts in Europe, Africa, and the Americas (in Asia, the ASEAN Intergovernmental Commission on Human Rights has been largely inactive). These are increasingly important mechanisms and spaces for governments, civil society, and human rights experts to discuss issues of concern in their region.

A EUROPE

In Europe, there are several intergovernmental groups that have human rights mechanisms. They include the ECHR, the European Social Charter, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Located in Strasbourg, the ECHR has jurisdiction over Council of Europe member states, and they accept individual and collective complaints. To bring a case before the ECHR, applicants must demonstrate that they have first tried and ‘exhausted domestic remedies’ by going through the national court process, including a decision at the highest national court. From the time of this final decision, the applicant has six months to submit their case to the ECHR, clarifying how the case is based on the European Convention of Human Rights, and showing how the applicant has suffered a significant disadvantage as a result.⁵⁵ The court reviews the case, communicates it to the relevant state, and if it is admitted, the court issues a judgment. This can be appealed, and the final judgment is sent to the Council of Ministers to be executed. Additional information about the process and procedures is online here: <https://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c=>.

Russian activists have been attempting to win a decision at the ECHR, based on their ongoing work to build up human rights treaty body recommendations for OST. Despite criminal prosecution and police harassment, three human rights defenders worked with the HIV Legal Network, the Rylkov Foundation and others to bring a case to the ECHR seeking a judgment against Russia for its failure to provide opioid substitution therapy.⁵⁶

Unfortunately, they had a major setback. In 2019 the Court found in favour of Russia, affirming that OST is ‘controversial’, that there is no legally binding instrument requiring OST, and that they deferred to Russia in its management of public health.⁵⁷

55. ECHR. “The life of an application”. Web document.

https://www.echr.coe.int/Documents/Case_processing_ENG.pdf (Accessed 21 August 2021).

56. International Centre on Human Rights and Drug Policy. “Meet the applicants: Kurmanayevskiy et. al. v. the Russian Federation”. <https://www.hr-dp.org/contents/1489> (Accessed 21 August 2021).

57. European Court of Human Rights. “The Russian State did not breach the Convention in refusing requests from drug addicts for methadone replacement therapy”. Press release, 26 November 2019. <https://www.hr-dp.org/contents/1483> (Accessed 3 September 2021).

B AFRICA

In Africa, the regional human rights mechanisms operating under the African Union include the African Commission on Human and People's Rights, and the African Court on Human and People's Rights.

The Commission has appointed six Special Rapporteurs as well as 11 working groups, including a group on the Protection of the Rights of People Living with HIV. The Commission is increasingly active, and African rights advocates including regional key populations networks and organisations have successfully engaged with the Commission to discuss their concerns. In 2017, the Commission issued a report on HIV, the law, and the African human rights system, based on close collaboration with UNAIDS, AIDS and Rights Association of Southern Africa (ARASA), African Men for Sexual Health and Rights (AMSHeR), Southern Africa Litigation Centre (SALC), and consultation with numerous human rights experts and communities across the continent, including people who use drugs.⁵⁸ The report specifically addresses criminalisation and discrimination as concerns for people who use drugs. It also calls on countries to review and amend laws accordingly and encourages access to harm reduction services as a form of HIV prevention. The report was launched with a public event at ICASA, the regional HIV conference. Subsequently, national dialogues about the report were held in Uganda and Rwanda to launch the study and develop recommended actions for those two countries.⁵⁹

COVID-19 appeared to throw a wrench in this process. INPUD members, however, could engage with the Commission to follow up on the report on the recommendations from the national dialogues (especially in Uganda, as a Love Alliance focus country) and could work the Committee on HIV and with human rights advisors at UNAIDS to promote more such dialogues, in order to continue the discussions that began at the regional level. The Committee mandate and contacts are at: <https://www.achpr.org/specialmechanisms/detail?id=15>.

The African Court of Human and People's Rights was established in 2004 and is based on the African Charter. It has complicated jurisdiction in those African Union member states that have ratified the necessary charters and protocols.⁶⁰ Of the Love Alliance countries, only Burkina Faso has fully accepted the jurisdiction of the court. Cases can be filed with the court by the African Commission on Human and People's Rights, State Parties, NGOs with observer status, and individuals in a state that has fully accepted the court's jurisdiction. The process for managing cases is outlined here: <https://www.african-court.org/wpafc/case-process/>.

58. ACHPR. 2017. *HIV, the law, and the African human rights system: Key challenges and opportunities for rights-based responses*. <https://www.achpr.org/news/viewdetail?id=21> (Accessed 21 August 2021).

59. More details on both national dialogues are online at: <https://www.achpr.org/documentationcenter?search=HIV>.

60. A map of countries and ratification status is online here: <https://www.african-court.org/wpafc/basic-information/>.

C AMERICAS

In the Americas, regional human rights mechanisms operate under the Organisation of American States (OAS). These include the Inter-American Commission on Human Rights, which has several special rapporteurs, and the Inter-American Court of Human Rights. The Commission has held events and issued calls for countries to address discrimination against people living with HIV.

In 2017, the Commission held a hearing on the rights of sex workers in the Americas, with testimony about abuses shared by leadership of RedTraSex, a regional network of sex workers.⁶¹ The OAS has established a rapporteur on rights of LGBTQI+ persons, and in 2020 issued a thematic report on the economic, social, cultural, and environmental rights of transgender and gender-diverse persons.⁶² In 2014, the Commission held a hearing on the impact of drug policies on human rights, requested by 16 regional organisations.⁶³

Overall, for INPUD members in the Love Alliance countries, it might be useful to engage with the African Commission on Human and People's Rights, especially as groundwork has been laid with the HIV Committee by UNAIDS and regional NGO networks to establish useful norms and recommendations that can be built on.

D RECOMMENDATIONS ON ENGAGING WITH REGIONAL MECHANISMS

1. Meet with UNAIDS human rights team to identify opportunities for future engagement with the African Commission on Human and People's Rights, in order to promote human rights of people who use drugs in the Love Alliance countries.

61. OAS. 2017. "IACHR holds first hearing on the rights of sex workers in the Americas". 23 March. https://www.oas.org/en/iachr/media_center/preleases/2017/036.asp (Accessed 21 August 2021).

62. OAS. 2020. "IACHR and OSRESCER Publish Thematic Report: 'Trans and Gender-Diverse People and Their Economic, Social, Cultural, and Environmental Rights'". 20 November. http://www.oas.org/en/iachr/media_center/PReleases/2020/282.asp (Accessed 21 August 2021).

63. IDPC. 2014. "Organisations from across America participate in hearing before the IACHR on drug policies and human rights". 18 March. <https://idpc.net/alerts/2014/03/organisations-from-across-the-hemisphere-to-participate-in-hearing-before-the-iachr-on-drug-policy-and-human-rights> (Accessed 21 August 2021).

6.0 TAKING THE WORK FORWARD

A GATHERING EVIDENCE

Several of those interviewed for this report noted the importance of having good and recent data for submissions and shadow reports, and suggested multiple groups to consider working together to develop a systematic approach to gathering high-quality evidence.

Sarang emphasised that each new submission needs to have new and recent data, and noted:

A good shadow report needs serious work. Regional networks and community networks should consult on how to build this process up and improve data collection, build research capacity at the community level for systematic data collection, and not just ad hoc writing a report for 500 Euro.⁶⁴

It will be especially important to have processes in place to protect anonymity and security of those who are interviewed, and to have a data protection plan that includes encryption and secure servers. Data will also need to be archived somewhere securely in case of interference, or website shutdown. INPUD may want to partner with international research centers or human rights documentation programs such as HURIDOCs or Benetech in developing these processes and systems.

64. Zoom interview with Anya Sarang, 1 September 2021.

B POTENTIAL ALLIES

As INPUD begins to engage more regularly and systematically with human rights mechanisms, it can draw on support and advice from other organisations that have done this work in the past, including:

- a. **UNAIDS and UNDP** have engaged with the Human Rights Council and treaty bodies and support engagement when they have resources. They can do amicus briefs on human rights and key populations, and can help to strategise on consultations, side events, and can facilitate introductions to UN human rights mechanisms.
- b. **OHCHR staff** – It is worthwhile engaging with human rights advisors from OHCHR in Geneva and in Love Alliance countries. Many OHCHR staff go from country desks to other positions higher up in the Geneva office. It can also be very worthwhile to develop working relationships with the human rights officers and advisors who work for Special Procedures in order to share information, inform them on issues, work with them on individual case complaints, write submissions, and then help to disseminate their reports to UN agencies, member states, and community and civil society networks.
- c. **National Human Rights Institutions** – It is worthwhile to assess whether the NHRIs in Love Alliance countries are open to engaging on drug policy issues, as they can help get recommendations into national submissions to the UPR or treaty body reviews.
- d. **UPR Info** – This Geneva-based NGO was created specifically to support other NGOs to engage with the UPR process. Their website has a treasure trove of information for building capacity, including a database with all the UPR recommendations organised by issues and countries. UPR Info organises a session before the UPR review in Geneva (or did so pre-COVID-19) with panels on the countries coming up for review and invite civil society experts from that country to speak. Many diplomats go to these sessions to listen and learn. They rarely have speakers with expertise on health, and even fewer on drug policy. They are very open to engaging: <https://www.upr-info.org/en>.
- e. **HRI and IDPC** have an ongoing collaboration to engage with UN human rights mechanisms in Geneva, and HRI would welcome the opportunity to liaise and coordinate with INPUD. This might work well where INPUD has strong member networks that can liaise with and benefit from HRI's Geneva-oriented contacts and experience. HIV Legal Network similarly is enthusiastic to collaborate on and coordinate submissions to UPR and treaty bodies, especially in Eastern Europe and Central Asia.
- f. **The 'traditional' human rights organisations:** Human Rights Watch has been supportive of and collaborative with drug policy organisations when engaging with the Council. Others that are starting to address the right to health more often include Amnesty International, International Commission of Jurists, and others that are now (in response to COVID-19) in the process of developing new strategies and plans to

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work on health rights. As such, it could be timely to liaise with them and find ways to collaborate, for instance, on joint statements about human rights the Philippines need to reflect drug user voices. In addressing human rights of people who use drugs in specific countries, such as Iran or China, INPUD might also benefit from forming coalitions with human rights groups led by exiles, including Tibetans and Uyghurs, who often engage with human rights processes for those countries.

- g. Academic institutions** can contribute to human rights submissions or host and advise special rapporteurs and can provide support – such as the human rights and health experts at University of Essex, Dornsife School of Public Health at Drexel University, and the Global Health Centre at the Graduate Institute.



C CURRENT STATUS OF RECOMMENDATIONS

A list of resources follows this paper. In particular it is important to consider the following in order to review recommendations that have already been made by human rights mechanisms, which can be used to support INPUD submissions:

- **International Guidelines on Human Rights and Drug Policy** – The extended version of these guidelines include commentary on each human rights principle, analysing how human rights mechanisms (including SRs and treaty bodies) have interpreted human rights norms for that principle. The current guidelines are available at: <https://www.humanrights-drugpolicy.org>. A draft of the updated version with commentary has been shared with INPUD in PDF.
- **HRI references to drug policy in CEDAW and CERD submissions** – See annex 4.
- **UPR Info** – This NGO manages a database of all treaty body recommendations: <https://www.upr-info.org/en>

D WELL-BEING FOR RIGHTS ACTIVISTS

While human rights work is deeply fulfilling, it can also lead to secondary traumatisation and stress from proximity to violence and suffering, especially when change is slow to come. Burnout is a real threat to the sustainability of work on human rights, especially for frontline rights defenders who engage in documenting police abuse, sexual violence, and killings.

A growing movement within the human rights field, led in part by feminist activists, seeks to politicise self-care. This is based on the understanding that affirming the happiness, dignity, and well-being of women and marginalised groups in a social structure designed to harm them is itself a powerful and potentially transformative political act. They argue that prevention of burnout is crucial in order to protect and sustain the limited ‘human resources’ in the movement.⁶⁵

In the words of Svitlana Moroz:

INPUD will need to find and support leaders who are passionate about [human rights mechanisms]. It's not for everyone. You need resources to do this, including peer-to-peer training – but it's all part of the work of communities holding governments accountable.⁶⁶

The Well-being Project is developing research and resources on activist self-care, and hosting coalitions that are developing new approaches collaboratively: http://wellbeing-project.org/wp-content/uploads/2020/03/research_report.pdf. Additional tactics and resources are available from New Tactics in Human Rights at <https://www.newtactics.org/conversation/self-care-activists-sustaining-your-most-valuable-resource>.

65. Verónica Vidal and Susan Tolmay. 2015. “Politicizing self-care and well-being in our activism as women human rights defenders”. Blog, 10 June. <https://www.awid.org/news-and-analysis/politicizing-self-care-and-wellbeing-our-activism-women-human-rights-defenders>.

66. Zoom interview with Svitlana Moroz, 1 September 2021.

E RECOMMENDATIONS ON OVERALL PREPARATION AND COORDINATION

- 1.** Meet with organisations and networks that are already engaging with human rights mechanisms in order to coordinate strategy, priorities, and agree how to work together (including IDPC, HRI, HIV Justice Network, Andrey Rylkov Foundation for Health and Social Justice, HRW, Eurasian regional networks and projects, and the UNAIDS human rights team);
- 2.** Develop a systematic approach to training and capacitating community members to do human rights documentation;
- 3.** Explore a partnership with an institution that can maintain an ongoing archive of human rights submissions, reports, and statements on drug policy and human rights;
- 4.** Draw on existing recommendations from UPR, SRs, and treaty bodies to inform future submissions; and
- 5.** Consider resources on self-care developed by human rights practitioners, and integrate them into training and capacity-building for INPUD members.

7.0 CONCLUSIONS AND RECOMMENDATIONS

It has been dominated by lawyers and elites from high-income countries, to its detriment. INPUD has much to offer this community through mobilising and engaging community voices at national, regional, and global levels, especially in low- and middle-income countries such as those in the Love Alliance, as well as through contributing to the development of new norms.

While the human rights world is full of technicalities and legal jargon, and can seem daunting to navigate initially, it is a relatively small community. It has been dominated by lawyers and elites from high-income countries, to its detriment. INPUD has much to offer this community through mobilising and engaging community voices at national, regional, and global levels, especially in low- and middle-income countries such as those in the Love Alliance, as well as through contributing to the development of new norms.

Through its grounded expertise and effective community mobilisation, INPUD could become a significant force for change. The challenge may be the risk of becoming quickly overwhelmed or burned out, and identifying the best use of time, as well as plans to ensure the work is sustainable for the long term. Recommendations for priorities are suggested below. Through sustained engagement and a strategic focus, INPUD and its members can help to shift norms and the culture of the human rights mechanisms to ensure they truly reflect and promote the rights of the community.

RECOMMENDATIONS:

While the human rights world is full of technicalities and legal jargon, and can seem daunting to navigate initially, it is a relatively small community. It has been dominated by lawyers and elites from high-income countries, to its detriment. INPUD has much to offer this community through mobilising and engaging community voices at national, regional, and global levels, especially in low- and middle-income countries such as those in the Love Alliance, as well as through contributing to the development of new norms.

1. To prepare overall:

- a.** Meet with organisations and networks that are already engaging with human rights mechanisms in order to coordinate strategy, priorities, and agree how to work together (including IDPC, HRI, HIV Justice Network, Andrey Rylkov Foundation for Health and Social Justice, HRW, Eurasian regional networks and projects, UNAIDS and UNDP);
- b.** Develop a systematic approach to training and capacitating community members to do human rights documentation;
- c.** Explore a partnership with an institution that can maintain an ongoing archive of human

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rights submissions, reports, and statements on drug policy and human rights;

- d. Draw on existing recommendations from UPR, SRs and treaty bodies to inform future submissions; and
- e. Consider resources on self-care developed by human rights practitioners, and integrate them into training and capacity-building for INPUD members.

2. On the International Criminal Court:

- a. Consider establishing a global coalition to support people who use drugs in the Philippines and the process underway at the ICC, through:
 - i. Coordinating messaging, media work and publications to use the ICC investigation to promote a global dialogue about human rights and drug policy by INPUD members and other allies;
 - ii. Developing emergency plans and dossiers for individual drug user activists and their families, in case of retaliation;
 - iii. Establishing an emergency fund for drug user human rights defenders, to support legal aid and/or emergency relocation;
 - iv. Ensuring UNAIDS, UNDP, and UNODC are following the process at the ICC and ready to engage as needed, including on urgent actions; and
 - v. Consult with organisations that have historically engaged with the ICC, as well as African rights activists with direct experience of cases, to think through how best to engage and how to support drug user participation in any future trial.

3. Coordinate engagement with treaty bodies, especially CESCR, the Human Rights Committee, CEDAW, and potentially also CRPD, to:

- d. Develop a set of recommendations that apply to multiple countries, and coordinate INPUD member submissions to treaty bodies to ensure consistent recommendations coming up in multiple countries;
- e. Prepare INPUD members to have an advocacy plan, in order to ensure concluding observations from the treaty body are pursued at the national level; and
- f. Consider organising a thematic briefing for one of the treaty bodies when they meet in Geneva (e.g., a thematic briefing on women who use drugs for CEDAW, with examples or speakers from the countries they are reviewing in that session).

4. Coordinate engagement with the Special Procedures, especially WGAD, the SR on Right to Health, and the SR on Human Rights Defenders:

- e. Continue to engage with WGAD to share individual complaints and support country visits, and collaborate with WGAD to launch and disseminate their recent report regionally through convening dialogues with member states, UN, civil society and communities;
- f. Continue to engage with the UN Special Rapporteur on the Right to Health, sharing individual complaints, briefing her on new and emerging issues related to the right

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to health, participating in consultations and surveys she conducts, and supporting country visits; and

- g.** Reach out to and brief the UN Special Rapporteur on Human Rights Defenders on the risks related to the ICC investigation in the Philippines, as well as to share individual complaints from other countries where INPUD activists face retaliation for their human rights work.

5. Identify future opportunities with the African Commission on Human and People's Rights:

- a.** Meet with UNAIDS human rights team and regional human rights groups to identify opportunities for future engagement with the African Commission on Human and People's Rights, and coordinate work to promote human rights of people who use drugs in the Love Alliance countries.

6. On the UPR:

- a.** While it is too late to coordinate a shadow report for the UPR for Uganda and Zimbabwe in early 2022, INPUD members in those countries could use the UPR dialogue as a public moment to raise their issues through organising webinars and communicating with the media
- b.** Beyond this, it is not recommended to prioritise UPR, given limited resources.

SELECTED RESOURCES

Damon Barrett. 2018. *Drug policy and human rights in Europe: Managing tensions, maximizing complementarities*. Council of Europe, Pompidou Group: Co-operation Group to Combat Drug Use and Illicit Trafficking in Drugs.
<https://rm.coe.int/drug-policyandhumanrights-in-europe-eng/1680790e3d>

IDPC, HRI, Bridging the Gaps, PITCH. 2018. *Making the Universal Periodic Review work for people who use drugs: Learning from the cycles completed between 2008 and 2017*. Report. <https://www.hri.global/universal-periodic-review-people-who-use-drugs>

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<https://frontlineaids.org/resources/making-the-universal-periodic-review-work-for-hiv/>.

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<https://www.humanrights-drugpolicy.org>

WEB RESOURCES AND DATABASES:

International Drug Policy Consortium – News, reports and human rights recommendations. <https://idpc.net/theme/human-rights>

International Centre on Human Rights and Drug Policy – Numerous reports, including analysis of treaty body recommendations. <https://www.hr-dp.org>

OHCHR – Rich information including all the reports, maps, training packages, recommendations, profiles and submission portals. Unluckily, it is also of the most clunky, poorly-designed and user-unfriendly websites on the internet, but everything you need is there if you can find it. <https://www.ohchr.org/EN/pages/home.aspx>

OHCHR - Civil Society: UN Human Rights resources for NGOs, human rights defenders, and other actors in civic space. Web page with numerous reports and guides. <https://www.ohchr.org/EN/AboutUs/Pages/CivilSociety.aspx>.

UPR Info – Resources on participation in the UPR, reports, and database of recommendations. <https://www.upr-info.org/en>

OPPORTUNITIES TO ENGAGE IN HUMAN RIGHTS ADVOCACY FOR THE INTERNATIONAL NETWORK OF PEOPLE WHO USE DRUGS (INPUD)

Specific mechanisms discussed in this report:

- [International Criminal Court](#)
- [Human Rights Council home page](#)
- [Universal Periodic Review: Timetable of country reviews](#)
- [Special Procedures – Country mandates](#)
- [Special Procedures – Thematic mandates](#)
 - [Special Rapporteur on the Right to Health](#)
 - [WGAD](#)

- [List of treaty bodies with links to their web pages](#)
 - [CESCR web page](#) – map of ratifications, list of countries to be reviewed at next session, and how to make submissions
 - [CEDAW web page](#)
 - [CRPD web page](#)
 - [Human Rights Committee \(CCPR\) web page](#)

ANNEXES

1. Tentative timetable for the 40th Session of the UPR Working Group (24 January – 4 February 2022)
2. Nepal UPR submission (PDF)
3. CEDAW and community-led research: Ukraine (slides)
4. HRI, References to drug policy in CEDAW and CERD jurisprudence

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