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Discussion Paper

‘A Better Tomorrow for the World’s Youth’? Accountability for children and young people at the 2016 UN General Assembly Special Session on Drugs

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Re-focusing the UNGASS theme: Children and young people as our starting point

‘Achieving the 2019 Goals: A Better Tomorrow for the World’s Youth’ has been set as the theme for the 2016 United Nations General Assembly Special Session on Drugs (UNGASS).¹ It is a welcome focus on children and young people at the most significant international meeting on drug policy in two decades.

The theme refers to goals set in the UN Political Declaration and Plan of Action on Drugs, agreed at the Commission on Narcotic Drugs in 2009.² On the promise of protecting youth, ‘our most precious asset’, the declaration reaffirmed methods and indicators of success that have categorised drug policies for decades, and despite which the harms children and young people have continued or even worsened.

Aside from various reaffirmations of commitment to focus on youth³ and a recognition of the need for targeted services for children and adolescents,⁴ the declaration and plan of action does not adequately address specific issues facing children and young people in relation to drug use. It does not adequately address children and young people’s involvement in the drug trade. Crucially, for a review process, it does not refer to the effects on children and young people of the laws and policies adopted in pursuit of international goals in drug control.

Nowhere in the UN drugs conventions, upon which the ‘2019 goals’ are based, are specific measures with regard to children and young people prescribed. Only one of the three treaties mentions children or minors, once in a preambular provision and once in an article covering penalties.⁵

The UNGASS theme therefore represents an assumption that ‘achieving the 2019 goals’ by the methods the declaration and the treaties prescribe is, without further scrutiny or reflection, conducive to achieving positive results for children and young people. It fails to acknowledge the limitations of those approaches or to confront any harms to children, foreseeable or unforeseeable, that may stem from them.

The existence of a policy says nothing about its effects, positive or negative. The theme of the UNGASS is therefore welcome in its focus on children and young people, but misdirected in its approach if UNGASS is to be a time to assess policies for impacts on children and young people.

Three elements for a focus on children and young people at UNGASS

Three fundamental elements are required to do justice to concerns for the rights and wellbeing of children and young people at the UNGASS on drugs:

1. A frame of reference suitable for evaluating international drug policies with regard to children and young people.
2. An evaluation of current international drug policies with regard to that framework.
3. Meaningful participation in that evaluation.

In this briefing:

- The UN Convention on the Rights of the Child (CRC) is proposed as an appropriate frame of reference.
- Examples of questions raised for the UNGASS by the CRC are set out.
- ‘Meaningful participation’ is discussed and recommendations made.

UN Convention on the Rights of the Child: A consensus-based and legally binding frame of reference

The UN drug control conventions and the 2009 political declaration are inappropriate frames of reference for a focus on children and young people at UNGASS. There are two main reasons for this. First is the lack of specific challenges, methods or goals relating to children and young people identified in the treaties or the political declaration. Second is that existing policies cannot be used to evaluate themselves.

What is required, therefore, is an existing consensus-based framework extrinsic to the drug control system but within the United Nations that does focus on children’s rights and wellbeing. Ideally, it should be one within which the issue of drug use and the drug trade is included. That framework is provided by the UN Convention on the Rights of the Child.

The CRC is an international treaty with a level of adherence surpassing each of the UN drugs conventions. Article 33 provides the entry point:

“States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.”

The article explicitly applies the CRC to the measures used to control substances scheduled under the drugs conventions. Critically, it requires ‘appropriate measures’ to protect children and young people from illicit use and to prevent their use in the drugs trade. This is the starting point for a qualitative and rights based analysis of international and state efforts under the CRC.

The analysis that must take place is the extent to which current laws, policies and practices constitute ‘appropriate measures’ for the achievement of these goals. ‘Appropriate measures’ are determined with reference to two main elements:

1. Rights compliance, using the framework of the CRC for analysis
2. Effectiveness, based on scientific evidence.⁶

Adopting this framework, principles and metrics may be developed from the CRC applicable to all facets of drug policy, from production to transit to sales, and from drug use and dependence among children and young people to parental use.

The ‘General Principles’ of the CRC provide normative foundations for such analysis.

- Non-discrimination (Article 2): The non-discrimination requires a focus on patterns of vulnerability. Key to this is appropriately disaggregated data.
- Best interests of the child (Article 3): the best interests of the child must be ‘a primary consideration’ in the development of laws and policies, and in procedures, that affect them. This is a crucial benchmark against which to assess policies and interventions, including how a goal is pursued.
- The right to life, survival and development (Article 6): This general principle represents the holistic nature of the CRC, which in turn mirrors holistic approaches to responding to the needs of at risk and vulnerable children and young people. Drug policies, in other words, can only do so much and are part of a wider picture that must be taken into account.
- The right to be heard (Article 12): Children and young people should be meaningfully consulted in the policies and practices that affect them. This is closely connected with the ensuring that their best interests are understood. This is both a principle and a right in itself, which is not forfeit on the international stage. It requires meaningful participation at the UNGASS.

The ‘evolving capacities’ principle (Article 5) must also be taken into account. Children and young people are not a homogenous group, either in their ethnic or socio-economic background (captured by article 2), or in their level of maturity, which is recognised in the evolving capacities principle. With regard to drug use and related interventions, in particular, responses must adapt to developing maturity.

Indeed, these principles support the call for targeted services contained within the 2009 plan of action, showing how a child rights based analysis can support existing commitments.

In addition to these principles the general obligation of the CRC must underpin the analysis:

“States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

In other words the general obligation suggests three elements:

- A requirement of good faith implementation of the requirements of the Convention.
- Adequate budgetary allocation to achieve progressive realisation of rights, which is of key relevance across any child rights evaluation.⁷
- International co-operation, mirroring the ‘shared responsibility’ principle in international drug control.

Illustrative questions raised for the UNGASS by the UN Convention on the Rights of the Child

There are approximately forty substantive child rights articles within the CRC, binding on all States parties. Table 1 sets out a selection of those most pertinent to drug policy and the UNGASS, each connected to examples of specific issue areas affecting children and young people.

The test of rights compliance and effectiveness underpin the questions in the table below, as do the general principles of the CRC and its general obligation. The Concluding Observations and General Comments of the UN Committee on the Rights of the Child are also taken into account in fleshing out the requirements of the various articles as applied to specific issue areas.⁸

This, however, is an illustrative exercise at this stage, addressing key articles in numerical order, and intended to demonstrate the kinds of questions drawn out by a child rights analysis.

It should be re-organised and refined for the purposes of an international meeting. For example, structure, process, and outcome indicators (measuring laws and policies, state efforts, and rights-based outcomes) could be adopted as a structure, following on from the work of the former UN Special Rapporteur on the Right to Health, Prof Paul Hunt, and the Office of the High Commissioner for Human Rights.⁹

However, what is obvious from the below is that:

- a) A wide range of child rights are engaged by drug policies and which raise important questions through which to assess current policies and practices
- b) Apart from rates of use and drug related health harms, traditional indicators of success such as number of people arrested and prosecuted, hectares eradicated and kilos of drugs seized do not feature.

The reason for this is simple; these traditional supply side indicators are measures of state effort, not outcome for children and young people. The rights analysis that must take place is not that effort was expended, but whether such efforts were rights compliant, and the extent to which they were or were not effective in terms of outcomes for children and young people.

Table 1: ‘Appropriate measures’: The CRC as a framework for analysis at the UNGASS on Drugs

Article 2 (<i>Non-discrimination</i>)	<ul style="list-style-type: none">• Are data available on patterns of drug use, dependence and related health harms disaggregated by at least age, gender and location?• How do enforcement practices affect specific groups of children and young people?• How do supply reduction practices, such as crop eradication strategies affect specific groups of children?
Article 3 (<i>Best interests of the child</i>)	<ul style="list-style-type: none">• How is the ‘best interests’ principle taken into account in drug policy decision-making?• Has a child rights impact assessment been carried out on any aspect of national drug policies? <p>How are the best interests of the child taken into account in:</p> <ul style="list-style-type: none">• Treatment interventions• Efforts with parents who use drugs• Arrest, sentencing and imprisonment of children and young people• Arrest, sentencing and imprisonment of parents• Crop eradication efforts

Article 4 (<i>Resource allocation</i>)	<ul style="list-style-type: none"> • How are resources allocated in drug policies? • How are research budgets focused? • What proportion of demand reduction budgets go to prevention, treatment and harm reduction for children and young people? • What proportion of supply reduction budgets go to alternative livelihoods? • What budgetary allocation is made for diversion efforts in juvenile justice? • What is the budgetary allocation for ensuring access to essential controlled medicines for paediatric care? • How are the best interests of the child taken into consideration in budget setting?
Article 12 (<i>Participation</i>)	<ul style="list-style-type: none"> • To what extent are children and young people involved in the development of policies that affect them? • To what extent are children who use drugs involved in treatment and care decisions relating to their health?
Article 16 (<i>Right to privacy</i>)	<p>How are children's privacy rights protected with regard to:</p> <ul style="list-style-type: none"> • Drug testing, searches and other such detection efforts? • Data protection (e.g. are children placed on drug user registries? Is information shared between health and law enforcement agencies?) • Drug treatment
Article 17 (<i>The right to appropriate information</i>)	<ul style="list-style-type: none"> • Is drugs prevention information evidence based, accurate and objective? How is this determined and evaluated? • Are children and young people, including those most at risk, aware of available services? How is this achieved and monitored? • Are children entitled to confidential information about drugs and harm reduction without parental consent? What are the standards around the provision of such information?

Article 18(2) (<i>Assistance to parents/guardians in child-rearing</i>)	<ul style="list-style-type: none"> • What social supports are in place for children whose parents are incarcerated for drug offences? • What kinds of family supports are available for parents who use drugs? (e.g. specialised social workers; day care and employment support) • Does status as a drug user represent a prima facie challenge to custody? Under what conditions is custody challenged? • Are people who use drugs disqualified from social welfare? • What supports are available for families involved in producing illicit crops? • Are families involved in production of illicit crops disqualified from social welfare or other assistance?
Article 19 (<i>Protection from neglect and violence</i>)	<ul style="list-style-type: none"> • How is police and institutional violence against children who use drugs, who are street involved, and/or involved in the drug trade responded to? • What studies are conducted to understand the effects of drug-related violence on children? • Have police or military interventions against drug gangs been assessed for impact on children? • What supports are available for children of parents experiencing drug dependence?
Art. 24 (<i>The right to health and health services</i>)	<ul style="list-style-type: none"> • How many children and young people, disaggregated by at least age, gender and location, have used illicit substances in the past month, three months, year? • What are the main health harms experienced by these children and young people? • Are specialised treatment and harm reduction services available to children and young people who use drugs? How is effectiveness measured? • What percentage of children in need have adequate access to essential controlled medicines (e.g. for palliative care, surgeries, epilepsy) in appropriate paediatric formulations? • Have child rights impact assessments been conducted as a component of crop eradication strategies?

Article 26 (<i>Right to social security</i>)	<ul style="list-style-type: none"> • Are people who use drugs disqualified from social welfare? If so, under what conditions? • Are people with certain forms of criminal record, or who have been in prison, disqualified from social security? • Are people who have been involved in the production of illicit crops disqualified from social security? • How are the best interests of the child taken into account in such decisions?
Article 27 (<i>Right to an adequate standard of living</i>)	<p>How is the child's right to an adequate standard of living (including nutrition, housing and clothing) taken into account in:</p> <ul style="list-style-type: none"> • Crop eradication strategies? • Situations where parents have been imprisoned or otherwise detained?
Article 28 (<i>Right to education</i>)	<ul style="list-style-type: none"> • Is drugs education provided in schools? How is its quality assessed against best practices? • How are the rights of children and young people taken into account in school-based prevention efforts? For example: Random drug testing and searches (lockers, schoolbags, clothing, strip searches, sniffer dogs)
Articles 14 (<i>Freedom of religion</i>) 30 (<i>Right to enjoy culture</i>) and 24.3 (<i>Abolition of harmful traditional practices</i>)	<ul style="list-style-type: none"> • Where relevant, has an appropriate assessment been undertaken on traditional uses of certain substances or plants, weighing harmfulness against the child's health and its right, in community with others to practice its culture, religion or indigenous traditions?
Article 32 (<i>Freedom from economic exploitation</i>)	<ul style="list-style-type: none"> • What efforts are undertaken to prevent the use of children in drug gangs and in the illicit drug trade? • What efforts are undertaken to assist social reintegration for the children and young people affected? (See also article 39 of the CRC) • What data, if any, are available on these phenomena? Are they sufficiently disaggregated to uncover patterns of vulnerability?

<p>Article 33 (<i>Protection from narcotic drug and psychotropic substances</i>)</p>	<ul style="list-style-type: none"> • What assessments are carried out to ensure that drug policies and practices are ‘appropriate’ with regard to child rights commitments? • How is rights compliance assessed? • How is effectiveness assessed?
<p>Article 37 (<i>Freedom from torture of cruel inhuman or degrading treatment or punishment; freedom from arbitrary arrest or detention; rights of children deprived of their liberty</i>)</p> <p>See also:</p> <p>UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990¹⁰</p>	<ul style="list-style-type: none"> • What efforts are undertaken to ensure that the absolute prohibition on torture and cruel, inhuman and degrading treatment or punishment is upheld in the context of drug control? • How are cases of abuse, whether by police, prison staff, drug treatment institutions, crop eradication teams or other state or non-state actors acted upon and perpetrators punished? • Are children incarcerated with their parents due to drug offences? How are such children cared for? How were their best interests taken into consideration in sentencing? • How many children are in prison for drug offences? • How many children are in compulsory treatment for drug dependence? • How many cases of abuse have been reported from such institutions and how have these been responded to?
<p>Article 40 (<i>Juvenile justice</i>)</p> <p>See also:</p> <p>UN Standard Minimum Rules on the Administration of Juvenile Justice, 1985¹¹</p>	<ul style="list-style-type: none"> • How many children annually are in contact with the criminal justice system for drug use or drug offences? • What efforts are undertaken to divert children from the criminal justice system in the context of drugs? • How are children’s fair trial standards upheld in relation to drug offences? • Are under 18s brought to juvenile drug courts? Under what circumstances? How are their rights upheld in such cases? • Is there a procedure for a juvenile criminal record to be expunged upon reaching a certain age? • How are children and young people in contact with the criminal justice system assisted with social reintegration (e.g. education, training and employment)? (See also article 39 of the CRC)

Meaningful participation: Avoiding tokenism

Involving children and young people in the decisions that affect them is a matter of law and practice. Legally it is a requirement of the CRC (article 12). In practice it is about informed decision-making.

From various recent studies we see the important insights gained and lessons learned from listening to children and young people on the issues affecting them. Children from Colombia, for example, have, through interviews in their own localities described their experiences of drug related violence and crop eradication campaigns.¹² The European Monitoring Centre on Drugs and Drug Addiction has collected children's views of alcohol and drug consumption and of living with parents who are dependent on them.¹³ The NGO Youth RISE has undertaken consultations with young people who inject drugs across fourteen countries to inform draft WHO technical guidance on HIV prevention treatment care and support for this group.¹⁴ These studies and more like them reveal important insights. In some respects they make for uncomfortable reading no matter what perspective one takes on drug policy. They challenge the status quo and reform options.

Meaningful participation with children and young people who are below the age of legal majority, however, is not easy. With younger children it is more complicated, requiring more creative techniques and close attention to child protection and safeguarding. At international events there are constraints based on the operation and functioning of diplomatic processes, and challenges around representation. Due to the issues themselves, many of the children and young people that need to be heard are out of reach or 'hidden'.

It is nonetheless important to significantly improve this aspect of drug policy development if the theme of the UNGASS and what it represents is to be taken seriously. Focusing on and harnessing children's perspectives and ideas about the threats and behaviours from which drug policies seek to protect them is simply good governance. There are numerous toolkits, studies and best practice guides from which to learn.

Some efforts have been made to include young people in major meetings of the UN Commission on Narcotic Drugs. In 2014, for example, the UN Office on Drugs and Crime provided a group of young people with the space and funding to deliberate on drug policy issues and to present their findings to the UN Commission on Narcotic Drugs. This was in various ways a positive example. The young people were from diverse regions, unscripted or directed (they were not, for example, simply given manipulative lines to say), clearly informed about the issues, and given a keynote address to the high level segment of the Commission. That address was a credit to their knowledge, compassion and creativity and to the value of participation.

After this, however, the process weakens. There is no indication that these young people's efforts were taken on board in any meaningful fashion by the Commission.

The selection process for the young people involved was not clear, nor was it clear who was really ‘represented’ and from what experiences. Many voices were missing, including children and young people most at risk from drug related harms, the drug trade and state responses.

Still, it would be unfair to characterise the process as ‘tokenistic’, a label that characterises many efforts to include children and young people in such events. The effort for meaningful participation by the Commission secretariat was clear. That States did not listen is not a fault of those organising an opportunity for young people to be listened to. What this example shows is a willingness to involve children and young people and indicates areas for improvement for UNGASS if, as it should, participation is to be a part of the process.

Representation:

- Efforts should be made to reach out to children most at risk and ensure that their viewpoints are fed into the process and listened to. This may require creative processes, such as:
 - National consultations with written submissions of findings to the UNGASS
 - Local consultations via street based programmes, drug treatment and harm reduction services, development and alternative livelihoods programmes and other such projects. Again, with written submissions of findings
 - Video submissions
 - A group of presentations given by children and young people summarising submissions
- A clear and transparent selection process also is required if children and young people are to attend the UNGASS.
- Efforts should be made to include younger children/adolescents in the process via creative techniques

Feedback and evaluation:

- Recommendations from children and young people should be summarised and submitted to the General Assembly in an official format for consideration.
- The extent to which those ideas were taken on board should be evaluated, publicised and fed back to the children and young people.

These are challenging requests, but possible given enough commitment and thought. If improvements in participation cannot be achieved for the UNGASS then at least outcome of that meeting is clear; it will have been a failure to ask ‘the world’s youth’ what kind of ‘better tomorrow’ they wanted for themselves.

Endnotes

¹ <http://www.unodc.org/ungass2016/> (Accessed 25 February 2015)

² Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (adopted at the High Level Segment of the UN Commission on Narcotic Drugs, 11-12 March 2009)

³ Political declaration paras 13, 20, 23.

⁴ Plan of action Part I section A.7 'Targeting vulnerable groups and conditions' pp. 22, 23

⁵ Preamble and art 3(5)(f), Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

⁶ See further D. Barrett 'Article 33 of the United Nations Convention on the Rights of the Child: Protection from narcotic drugs and psychotropic substances', in P. Alston and J. Tobin (eds) *A commentary on the United Nations Convention on the Rights of the Child*, Oxford University Press, forthcoming, 2015. See also K. Thompson, 'Drug treatment: Legality and obligation under the international drug conventions and human rights'. Thesis submitted for the degree of MA in human rights, University of Vienna, August 2014 (applying this two stage test to drug treatment provisions of the drug conventions and documenting support through resolutions of the UN Commission on Narcotic Drugs)

⁷ See, A. Nolan, 'Economic and social rights, budgets and the Convention on the Rights of the Child' 21 *International Journal of Children's Rights* 248, 2013.

⁸ See D. Barrett and P. Veerman, 'Article 33: Protection from Narcotic Drugs and Psychotropic Substances' in A. Alen et al (eds), *A Commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff 2012. D. Barrett 'Article 33 of the United Nations Convention on the Rights of the Child: Protection from narcotic drugs and psychotropic substances', in P. Alston and J. Tobin (eds) *A commentary on the United Nations Convention on the Rights of the Child*, Oxford University Press, forthcoming, 2015.

⁹ For a range of documents and studies see <http://www.ohchr.org/EN/Issues/Indicators/Pages/documents.aspx> (Accessed 25 February 2015)

¹⁰ United Nations rules for the protection of juveniles deprived of their liberty, UN Doc No GA/RES/45/113, 1990.

¹¹ United Nations standard minimum rules for the administration of juvenile Justice, UN Doc No GA/RES/40/33, 1985.

¹² J. Hunter Bowman, 'Real Life on the Frontlines of Colombia's Drug War' in D. Barrett (ed) *Children of the drug war: Perspectives on the impact of drug policies on young people*, iDebate Press 2011.

¹³ D. Olszewski, G. Burkhart and A. Bo, *Children's Voices: Experiences and Perceptions of European Children on Drug and Alcohol Issues*, European Monitoring Centre on Drugs and Drug Addiction, 2010.

¹⁴ A. Krug et al, *Experiences of Young People who Inject Drugs and their Challenges in Accessing Harm Reduction: Report of Youth RISE Community Consultations*, Youth RISE, UNAIDS (forthcoming). For an overview see A. Krug et al, 'Beyond the comprehensive package: findings from community consultations with young people who inject drugs in 14 countries'. Poster presentation WEPE284, 20th International AIDS Conference 2014.