

The Status and the Purposes of the International Guidelines on Human Rights and Drug Control

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NOTE: 'The Guidelines' in this analysis are treated as a singular document entity

In June 2017, a group of authors affiliated to the International Centre on Human Rights and Drug Policy (HRDP) and few other illicit drugs control reform enthusiasts published in the *Harvard University's Health and Human Rights Journal* a special section on human rights and drug control "establishing the case for international guidelines on human rights and drug policy."¹ By March 2019, the International Guidelines on Human Rights and Drug Policy, hereafter the Guidelines, were launched at the at the Commission on Narcotic Drugs (CND) in Vienna.²

Presented in a press release carrying the Joint United Nations Programme on HIV/AIDS (UNAIDS) and United Nations Development Programme (UNDP)'s logos as "a landmark set of international legal standards to transform and reshape global responses to the world drug problem,"³ the Guidelines has been actively promoted since by several UN entities, especially the UNDP and the Office of the High Commissioner on Human Rights (OHCHR), by several UN treaty body members, and by several UN Special Procedures and by their institutions.⁴ Via these avenues and due to the active illicit drug control reformist civil society organizations' lobby, funding⁵ and direct involvement,⁶ the Guidelines started gaining "increasing diplomatic recognition,"⁷ and started being quoted as the golden standard for adopting the ultimate human rights approach to drug control in several UN documents and communications and in

¹ Health and Human Rights Journal, vol. 19, no. 1 (2017), pp. 231–278.

² <https://cndblog.org/2019/03/side-event-from-abstract-principles-to-concrete-guidance-international-guidelines-on-human-rights-and-drug-policy/>

³ UNDP, UNAIDS, Press Release, Landmark international guidelines launched on human rights and Drug policy VIENNA/GENEVA, 15 March 2019 https://www.unaids.org/sites/default/files/20190314_PR_Drugs_UNAIDS_UNDP_en.pdf

⁴ "UN treaty body members, and UN Special Procedures' have worked in various partnerships and within their respective institutions to educate UN human rights mechanisms about the Guidelines and to advocate for their inclusion in their respective areas of work." R. Schleifer, J. Hannah, and D. Barrett, Influencing Rights-Based Drug Policy Reform: The International Guidelines on Human Rights and Drug Policy in Action, International Guidelines on Human Rights and Drug Policy, Implementation Series No. 2 (2023), p.5

⁵ See Bobby P. Smyth, Is big money distorting the global drug policy conversation? *Addiction* 120: 1284-1285, April 2025, <https://onlinelibrary.wiley.com/doi/full/10.1111/add.70059>

⁶ See for example Global Commission on Drug Policy co-sponsored a side event to the 60th regular session of the Human Rights Council (HRC); organized by the Office of the High Commissioner for Human Rights (OHCHR) and the International Centre on Human Rights and Drug Policy at the University of Essex, entitled "Implications of International Guidelines on Human Rights and Drug Policy: Insights from Diverse National Contexts". <https://globalcommissionondrugs.org/highlights-from-gcdp/promoting-human-rights-in-drug-policy/>

⁷ R. Schleifer, J. Hannah, and D. Barrett, Influencing Rights-Based Drug Policy Reform: The International Guidelines on Human Rights and Drug Policy in Action, International Guidelines on Human Rights and Drug Policy, Implementation Series No. 2 (2023), p.5.

some regional instruments.⁸ As stated, and hoped for by the Guidelines' authors "the more they are referenced in court cases, UN resolutions they may gain in persuasive authority."⁹

The structure of the Guidelines comprises an implementation section and several complementary elements were issued along with it, i.e., a Commentary offering "an expert analysis of the Guidelines",¹⁰ Implementation Reports,¹¹ and an interactive website that includes among others an Assessment tool, a section called the "Guidelines in action"¹² exploring the ways the Guidelines has been implemented across the world, and the so-called Implementation dialogues.¹³ The complimentary elements prove that the 2019 Guidelines' purpose is far from trying to close a knowledge gap, mediate an institutional detachment within the two UN regimes, or provide a theoretical base for a certain reformist vision in relation to the application of human rights to drug control that civil society might use. The 2019 Guidelines' purpose is, as stated, to "provide authoritative support for legal reforms and policy change"¹⁴ and to prescribe "measures States should undertake or refrain from undertaking."¹⁵ In short, the 2019 Guidelines is meant to be implemented.

The Guidelines are written in a cryptic and grand style soaked in human rights language. Reproducing parts of the UN human rights conventions provisions and depicting various issues in terms of human dignity, the Guidelines text and recommendation are hard to resist or contest. However, as we will see in the following, the Guidelines bring a distinct way of dealing with human rights legal provisions, so distinctive and, most probably, so unacceptable in relation to any other issue, that the Guidelines could become the litmus test of how human rights **should not be** dealt with.

Furthermore, despite claiming that the Guidelines are "taking into account their concurrent obligations under the international drug control conventions,"¹⁶ it appears on closer inspection, that its aim is to reform and change the drug control to something foreign to the UN drug control conventions' objects and purposes. This can be seen in the Guidelines text and recommendations, and in the Guidelines promoters' messages and communications. For example, the High Commissioner for Human Rights has been promoting the so-called

⁸ For example, the European Union's Drugs Strategy 2021-2025 cited the Guidelines in its strategic priority on international cooperation. "The Pompidou Group of the Council of Europe has taken the lead by using the Guidelines, alongside Council of Europe human rights agreements, as the normative baseline for a self-assessment tool for countries in the region." R. Schleifer, J. Hannah, and D. Barrett, *Influencing Rights-Based Drug Policy Reform: The International Guidelines on Human Rights and Drug Policy in Action*, International Guidelines on Human Rights and Drug Policy, Implementation Series No. 2 (2023), p.5.

⁹ <https://www.humanrights-drugpolicy.org/about/>

¹⁰ R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, *Commentary on the International Guidelines on Human Rights and Drug Policy* (2023).

¹¹ R. Schleifer, J. Hannah, and D. Barrett, *Influencing Rights-Based Drug Policy Reform: The International Guidelines on Human Rights and Drug Policy in Action*, International Guidelines on Human Rights and Drug Policy, Implementation Series No. 2 (2023). <https://www.humanrights-drugpolicy.org/guidelines-in-action/>

¹² Taking stock of 4 years of implementation of the Guidelines in "more than 25 countries in the Americas, Asia, Europe, and Sub-Saharan Africa; by the European Union; and by UN human rights mechanisms, reflecting an emerging community of practice among a diverse group of stakeholders,"

¹³ According to the Guidelines webpage "The Implementation Dialogues are a series of regional consultations focusing on the implementation of the Guidelines on Human Rights and Drug Policy. Their objectives are to discuss and map out challenges and opportunities for implementing the Guidelines in national and regional settings."
<https://www.humanrights-drugpolicy.org/implementation-dialogues/>

¹⁴ Rick Lines and Richard Elliott and Julie Hannah and Rebecca Schleifer and Tenu Avafia and Damon Barrett, *The Case for International Guidelines on Human Rights and Drug Control* (March 8, 2017), p.231. *Health and Human Rights Journal* (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

¹⁵ What are the Guidelines? <https://www.humanrights-drugpolicy.org/about/>

¹⁶ What are the Guidelines? <https://www.humanrights-drugpolicy.org/about/>

“responsible regulation”¹⁷ or full legalization of illicit drugs in recommending UN Member States to “Consider developing a regulatory system for legal access to all controlled substances”.¹⁸ Such recommendations are made, for example, in the 2023 *OHCHR Report Human rights challenges in addressing and countering all aspects of the world drug problem, Section V Conclusions*. This Report directly quotes the International Guidelines on Human Rights and Drug Policy’s key recommendation to “develop effective drug policies grounded in human rights” and with this end in view to “Consider developing a regulatory system for legal access to all controlled substances”.¹⁹ The UN drug conventions strictly limit the use of controlled substances to medical and scientific purposes. It is, therefore, difficult to understand how the OHCHR/the Guidelines’ recommendation can be accommodated by the present legal framework on illicit drug control and how the concurrent obligations under the three drug conventions have been taken into account?

In this context and taking in consideration several facts:

- the high profile the Guidelines has achieved,
- the fact that the Guidelines seem progressively being imposed on the UN Member States as the only valid measuring stick for their human rights commitment and compliance, in relation to drug control and in general,
- the contradictions between what has been stated on the Guidelines’ webpage and the text of the Guidelines and its purposes,
- the many internal contradictions found in the Guidelines text itself,

Several questions arise.

This paper is going to briefly address a few of such questions.

1. What are the Guidelines? The 2017 editorial point of view

The 2017 editorial of the special section of the *Harvard University’s Health and Human Rights Journal* titled *The Case for International Guidelines on Human Rights and Drug Control* authored by the leadership of International Centre on Human Rights and Drug Policy (HRDP) and some like-minded others,²⁰ depicts the Guidelines as the thing that “could help close the

¹⁷ Statements Office of the High Commissioner for Human Rights, Drug policies will be more effective with a human rights approach, Türk says 22 November 2023, Delivered by Volker Türk, UN High Commissioner for Human Rights At 8th Brandenburg Forum on Drugs and Development Policies, Statement delivered by Volker Türk, UN High Commissioner for Human Rights at the 8th Brandenburg Forum on Drugs and Development Policies, organised by the Global Partnership on Drug Policies and Development (GPPD) (commissioned by the German Federal Ministry for Economic Cooperation and Development - BMZ, and implemented under political patronage of the Commissioner of the Federal Government for Drug and Addiction Policy) and co-hosted by the Government of the Netherlands, the Norwegian Ministry of Health and Care Services, the Transnational Institute (TNI), and the International Drug Policy Consortium (IDPC). <https://idpc.net/news/2023/11/drug-policies-will-be-more-effective-with-a-human-rights-approach-un-human-rights-chief-says>

¹⁸ Human rights challenges in addressing and countering all aspects of the world drug problem Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/54/53, 15 August 2023.

¹⁹ Human rights challenges in addressing and countering all aspects of the world drug problem Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/54/53, 15 August 2023, para. 68, (c), p.18. <https://docs.un.org/en/A/HRC/54/53>

²⁰ Rick Lines, Richard Elliott, Julie Hannah, Rebecca Schleifer, Tenu Avafia and Damon Barrett, The Case for International Guidelines on Human Rights and Drug Control (March 8, 2017), p.231. *Health and Human Rights Journal* (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

human rights gap—and point the way to drug laws and policies that would respect, protect, and fulfill human rights rather than breach them or impede their full realization.”²¹

This editorial and the articles published in this special section of the above-mentioned *Harvard Journal* features high in the legal mindset/philosophy of the Guidelines. As indicated in Guidelines’ Annex II Methodology in relation to the legal research “A group of experts developed several background papers that framed some of the key thematic issues and helped inform various aspects of the Guidelines. Likewise, individuals from the core editorial team working on the Guidelines provided an overarching framing paper establishing the case for international guidelines on human rights and drug policy.”²² Actually, the text of the Guidelines is rather faithfully reproducing these background papers, adding nothing in substance on the respective thematic issues. As well, much of the editorial spirit is recognizable in the 2019 Guidelines and could be useful in clarifying some of the above-mentioned contradictions.

The 2017 editorial already sets the tone suggesting that the mere existence of drug laws is problematic and stating that “The international drug control treaties contribute directly to this environment of human rights risk and violations.”²³

It should be noted that there is nothing in the UN drug control convention that contradicts the present human rights regime or denies any human rights to any particular group. Both regimes, namely the international drug control and the human rights, have been developed in parallel under the UN premises. This is notable not least with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Convention on the Rights of the Child (CRC) of 1989. These instruments were drafted in tandem, and the content of CRC Article 33 is almost reproduced verbatim in the Preamble of the ‘88 Convention. However, the UN drug conventions’ objects and purposes would certainly conflict with a hypothetical right to use illicit drugs.

The above-mentioned 2017 editorial statement is not surprising. Given its authorship, this editorial follows the same logic and uses the same arguments and black and white thinking as previous illicit drug control reform literature. The idea that the human rights regime is good while the drug control regime is plainly malevolent has been proliferated for a long time by the illicit drugs control reform activists.²⁴

The distinction in the 2017 *Harvard* editorial is made by the fact that the drug control conventions are belonging to the so called “suppression conventions” which “obligate states to use their domestic laws, including criminal laws, to deter or punish the activities identified within the treaty... However, while suppression treaties mandate all states to act domestically

²¹ Rick Lines and Richard Elliott and Julie Hannah and Rebecca Schleifer and Tenu Avafia and Damon Barrett, The Case for International Guidelines on Human Rights and Drug Control (March 8, 2017), p.231. Health and Human Rights Journal (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

²²International Guidelines on Human Rights and Drug Control, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf

²³ R. Lines, Drug control and human rights in international law (Cambridge, UK: Cambridge University Press, 2017) in Lines, Rick and Elliott, Richard and Hannah, Julie and Schleifer, Rebecca and Avafia, Tenu and Barrett, Damon, The Case for International Guidelines on Human Rights and Drug Control (March 8, 2017), p.232. Health and Human Rights Journal (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

²⁴ See for example Lines, R. (2017). *Drug Control and Human Rights in International Law* Cambridge University Press. <https://doi.org/10.1017/9781316759707>, SU Repository: <https://cronfa.swan.ac.uk/Record/cronfa44599> <https://www.cambridge.org/gb/academic/subjects/law/public-international-law/drug-control-and-human-rights-international-law?format=HB&isbn=9781107171176#contentsTabAnchor>, D. Barrett, *The war on drugs: A human rights indictment*, Keynote speech delivered at the Mexico City Human Rights Commission, ‘International Forum on Drugs and Human Rights’, 7-9 August 2013, etc.

and collectively to combat crimes defined as being of international concern, they offer no obligations and little guidance on what is and is not an appropriate penal response.”²⁵ The logic seems to be that the simple fact that criminal law is used to deter or punish certain conducts opens the door to human rights violations. This follows the same logic and thinking as one of the spinal bones of the illicit drugs control reform’s ideas which was articulated by one of the authors associated with both the 2017 Harvard editorial and articles, and with the Guidelines and its Commentary, namely that **drug control conventions criminalise people**.²⁶

This postulate was coined in 2009 by one of the International Centre on Human Rights and Drug Policy (HRDP) co-directors together with the former United Nations Special Rapporteur on Torture and member of HRDP International Advisory Committee,²⁷ Manfred Nowak.²⁸ The authors state “Unlike human rights law, which focuses to a large extent on the protection of the most vulnerable, the drug conventions criminalise specifically vulnerable groups. They criminalise people who use drugs...”²⁹ This premise is explicitly or implicitly the core of the human rights language-centred reformist campaigns that depicts the illicit drug users as the “most vulnerable” or most affected group in society.³⁰ The idea has been embraced and proliferated by several UN entities, particularly the four that are associated with the Guidelines. Even though it is not formulated *in verbatim*, this idea also filters through the 2019 Guidelines on Human Rights and Drug Policy.

As a matter of fact, the drug conventions, as with any other similar international instruments, have penal provisions criminalising certain **conducts**, when committed **intentionally. They do not criminalise people!** However, despite its legal inaccuracy, the “criminalisation of people who use drugs” idea has been very profitable as a communication strategy. It has a triple effect: it victimises all illicit drug users, including the recreational users, it vilifies the international drug conventions, and it sets apart and qualifies the two regimes. As claimed by this black and white thinking the human rights regime is good while the drug control regime is plainly bad.³¹

Moreover, the existence of penal provisions in a convention does not automatically makes that instrument a direct contributor to an environment of human rights risk and

²⁵ Lines, Rick and Elliott, Richard and Hannah, Julie and Schleifer, Rebecca and Avafia, Tenu and Barrett, Damon, The Case for International Guidelines on Human Rights and Drug Control (March 8, 2017), p.231. Health and Human Rights Journal (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

²⁶ Emphasis added. Barrett, Damon and Nowak, Manfred, The United Nations and Drug Policy: Towards a Human Rights-Based Approach (August 25, 2009). THE DIVERSITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF PROFESSOR KALLIOPI K. KOUFA, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, Available at SSRN: <https://ssrn.com/abstract=1461445>

²⁷ <https://www.hr-dp.org/international-advisory-committee>

²⁸ Barrett, Damon and Nowak, Manfred, The United Nations and Drug Policy: Towards a Human Rights-Based Approach (August 25, 2009). THE DIVERSITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF PROFESSOR KALLIOPI K. KOUFA, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, Available at SSRN: <https://ssrn.com/abstract=1461445>

²⁹ Barrett, Damon and Nowak, Manfred, The United Nations and Drug Policy: Towards a Human Rights-Based Approach (August 25, 2009). THE DIVERSITY OF INTERNATIONAL LAW: ESSAYS IN HONOUR OF PROFESSOR KALLIOPI K. KOUFA, pp. 449-477, Aristotle Constantinides and Nikos Zaikos, eds., Brill/Martinus Nijhoff, 2009, Available at SSRN: <https://ssrn.com/abstract=1461445>

³⁰ See Roxana Stere, International Drug Control and Human Right-The Laws, the Rhetoric, and the Policies Part I-The Too Great Expectations or Knocking at the wrong door? The Office of the High Commissioner for Human Rights, 2025, <https://narkotikapolitisktcenter.se/wp-content/uploads/2025/03/International-Drug-Control-and-Human-Right-The-Laws-the-Rhetoric-and-the-Policies.pdf>.

³¹ See Roxana Stere, International Drug Control and Human Right-The Laws, the Rhetoric, and the Policies Part I-The Too Great Expectations or Knocking at the wrong door? The Office of the High Commissioner for Human Rights, 2025. <https://narkotikapolitisktcenter.se/wp-content/uploads/2025/03/International-Drug-Control-and-Human-Right-The-Laws-the-Rhetoric-and-the-Policies.pdf>

violations, or a violator. Such a direct causality would lead to aberrant situations. Several international human rights conventions have penal provisions, i.e., the International Convention on the Elimination of All Forms of Racial Discrimination Article 4, which addresses 'racist hate speech' through the use of penal provisions, Article 4 and 6 International Convention for the Protection of All Persons from Enforced Disappearance, Article 3 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography criminalize "offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour... (ii) (b) Offering, obtaining, procuring or providing a child for child prostitution..."³² etc. The same legal logic of defining an undesirable conduct and establishing intentionality was applied in relation to the three drug conventions Art 36 of the Single Convention,³³ Convention on Psychotropic Substances, 1971 Art 22,³⁴ and Article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,³⁵ requiring *mens rea*.

2. What are the Guidelines? The Guidelines official webpage point of view

The Guidelines' interactive website provides a direct answer to this question stating "The Guidelines are intended as a reference tool for those working to ensure human rights compliance at local, national, and international levels, including parliamentarians, diplomats, judges, lawyers, policy makers, civil society organisations and affected communities. They provide authoritative support for legal reforms and policy change, as well as specific interventions grounded in human rights law."³⁶ It also declares that "The Guidelines highlight the measures States should undertake or refrain from undertaking in order to comply with their human rights obligations, while taking into account their concurrent obligations under the international drug control conventions...Critically, they do not invent new rights. They apply existing human rights law to the legal and policy context of drug control in order to maximise human rights protections, including in the interpretation and implementation of the drug control conventions."³⁷

The website further explains that the "Guidelines are not legally binding. It is the sources they use that are binding or that are derived from authoritative 'soft law'. However,

³² Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Art. 3.

³³ "Cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally", Single Convention on Narcotic Drugs, 1961.

³⁴ Art 22 1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention" Convention on Psychotropic Substances, 1971.

³⁵ Art 3 (1) "Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally..."

(2) 2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally..."

³⁶ <https://www.humanrights-drugpolicy.org/about/>

³⁷ What are the Guidelines? <https://www.humanrights-drugpolicy.org/about/>

over time, the more they are referenced in court cases, UN resolutions they may gain in persuasive authority.”³⁸

The same source further state that the Guidelines “envision a future where every individual is entitled to dignity and rights regardless of their involvement in illicit drug economies.”³⁹

At a first glance, all the above statements sound promising. We all look forward to a future where every human being is entitled to dignity and enjoys all human rights stipulated by law. However, when looking at details, these statements are more confusing than clarifying and generate more questions than answers.

3. The Guidelines’ source of their authority?

Some of the above-mentioned paragraphs are contradictory. On one hand the Guidelines are presented as **providing “authoritative support** for legal reforms and policy change,”⁴⁰ without further explanation regarding the source of their authority. On the other hand, we are told that “Guidelines are not legally binding” and that they **might gain** in persuasive authority”⁴¹ **“over time”**⁴² pending on being referenced in court cases and UN resolutions. This leaves **unclear where the original authoritative support comes from.**

The 2019 Guidelines was not officially endorsed by the United Nations. The Human Rights Council “took note” of the International Guidelines on Human Rights and Drug Policy in 2025 draft resolution A/HRC/60/L.31/Rev.1.⁴³ However, according to the UN terminology “the terms “takes note of” and “notes” are neutral terms that constitute neither approval nor disapproval.”⁴⁴ Such terms acknowledge the existence of a report (of an individual, an organ or an organization), a fact or an event.⁴⁵ “Taking note” has never been used as an endorsement formula in UN documents.

The official webpage states the evidence, namely that the Guidelines are not legally binding. It adds an even more confusing sentence that “It is the sources they use that are binding or that are derived from authoritative ‘soft law’.”⁴⁶ The simple fact that “hard law” is quoted or referenced by a text does not lend any authority to the quoter, to the interpreter or to the interpretation, except the cases where the quoters or interpreters are invested with such authority. This is not the case here. As we are going to see, the matter of the Guidelines’ authorship is a hard nut to crack, as it is not clearly stated in the Guidelines. What can be

³⁸ <https://www.humanrights-drugpolicy.org/about/>

³⁹ International Guidelines on Human Rights and Drug Policy, <https://www.humanrights-drugpolicy.org>.

⁴⁰Emphasis added. Rick Lines and Richard Elliott and Julie Hannah and Rebecca Schleifer and Tenu Avafia and Damon Barrett, The Case for International Guidelines on Human Rights and Drug Control (March 8, 2017), p.231. Health and Human Rights Journal (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

⁴¹ Emphasis added. <https://www.humanrights-drugpolicy.org/about/>

⁴² Emphasis added.

⁴³ <https://docs.un.org/en/a/hrc/60/l.31/rev.1>

⁴⁴ Draft decision submitted by the President of the General Assembly Meaning of the terms “takes note of” and “notes,” A/55/L.94, <https://digitallibrary.un.org/record/447706?ln=en&v=pdf>

⁴⁵ Drafting and editing of resolutions at the United Nations https://www.unodc.org/documents/commissions/CND_CCPCJ_joint/Resolutions/Draft_Resolutions_and_Draft_Decisions.pdf

⁴⁶ <https://www.humanrights-drugpolicy.org/about/>

guessed or deducted from the hints included in the Guidelines' Annex II Methodology in terms of authorship involves, by no means, anyone invested with such authority.

In conclusion, despite being declared as "authoritative support for legal reforms and policy change" it is rather unclear whose report this is and what lends the authoritativeness of this "reference tool."

What is clear is that several binding human rights provisions relevant in the context are ignored, or they are mutilated to a convenient interpretation, as we will see in the following.

It is also clear that the UN drug control conventions are binding instruments, they are in force, and they are almost universally ratified. Also, it is evident that the legal change in international law should go via prescribed legal mechanisms- amendments, denunciations, modifications, invalidity, termination, withdrawal and suspension included in these conventions and as stipulated by the Vienna Convention on the Law of the Treaties (VCLT). Still the UN drug conventions are the Guidelines' target for "legal reforms and policy change" towards their dissolution/invalidation.

4. Who are the authors of the Guidelines?

Other Guidelines carrying the UN or UN entities' logos have their status and authorship clearly stated, see for example the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework",⁴⁷ or the "HIV/AIDS and Human Rights, International Guidelines, Revised Guideline 6 Access to prevention, treatment, care and support".⁴⁸ This is not the case with the International Guidelines on Human Rights and Drug Control. Figuring out such basic information as the identity of the authors and which is the document's status is a mind game.

The Guidelines' text provide no clarification. The Guidelines' webpage posts two questions "Is this an NGO Report?"⁴⁹ and "Who wrote the Guidelines?" but instead of giving direct and clear answers it offers long and confusing narratives.

On the question "Is this an NGO Report?" instead of giving a Yes/No answer it states that "The Guidelines have been developed via a collaboration between academics, UN entities and civil society. The process was co-led by the International Centre on Human Rights and Drug Policy, based at the Human Rights Centre, University of Essex and the United Nations Development Programme (UNDP). The Guidelines have been developed in collaboration with, and are co-sponsored by the UNDP, the Joint United Nations Programme on HIV/AIDS (UNAIDS), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO)."⁵⁰

⁴⁷ The "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises... The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011." Authors Ruggie, John Gerard
UN. Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, https://digitallibrary.un.org/record/705860?v=pdf#files:///Users/roxanaclaudiastere/Downloads/A_HRC_17_31-EN.pdf

⁴⁸ HIV/AIDS and Human Rights, International Guidelines, Revised Guideline 6
Access to prevention, treatment, care and support, UNITED NATIONS PUBLICATION, English original, August 2002. Annex I lists all the Participants and the Convening agencies.

⁴⁹ <https://www.humanrights-drugpolicy.org/about/>

⁵⁰ <https://www.humanrights-drugpolicy.org/about/>

Indeed, the Guidelines carries the logos of the four above mentioned UN entities and the logo of the International Centre on Human Rights and Drug Policy. However, the Guidelines also carries a disclaimer stating that “The views expressed in this publication do not necessarily represent those of the United Nations, including the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP), the World Health Organization (WHO), or their Member States.”⁵¹ In this context, it is difficult to understand the extent of collaboration and co-sponsorship of these UN entities. That leaves only the International Centre on Human Rights and Drug Policy (HRDP) as the full holder of the views expressed within the Guidelines.

Is the HRDP an NGO? The answer might not be straight forward but what is sure is that HRDP is neither an institution invested in any democratic way with authority to impose legal reform or policy change to UN Member States, nor to provide authoritative legal interpretations. HRDP does not define itself as an NGO or offers a clear picture of what it is on its webpage.⁵² It is just enumerating what it is dedicated to, how it pursues its mandate and similar. It states that it was established in 2009, and that “Since 2011, the HRDP has made its home at the Human Rights Centre at the University of Essex”.⁵³ It is also stated that “*The work of the HRDP is generously supported by the Open Society Foundation’s Global Drug Policy Programme.*”⁵⁴ What is clear is that HRDP has been an entity consistently and exclusively associated with the illicit drugs reform agenda. The leadership of the HRDP have been involved with several of the most vocal NGOs which have advocated for drug control reform towards regulation or legalization of illicit drugs. It is also clear that the funding of HRDP is coming from, probably, the most well know illicit drugs legalization promoter- the Open Society Foundation (OFS).

Rick Lines, the co-founder and Chair of the International Centre on Human Rights and Drug Policy was as well the Executive Director of Harm Reduction International.⁵⁵ As stated on the HRDP’s website “For more than a decade, Rick represented NGOs at high level United Nations fora including the UN Commission on Narcotic Drugs, the UN Human Rights Council and the UNAIDS Programme Coordinating Board. He is a past member of the Strategic Advisory Group to the United Nations Drug Use and HIV, the Technical Advisory Group to the Global Commission on HIV and the Law and the Reference Group to the United Nations on HIV and Injecting Drug Use.”⁵⁶ He is also the editor of the 2017 *Harvard University’s Health and Human Rights Journal’s* special section on human rights and drug control⁵⁷ and one of the authors of the editorial *The Case for International Guidelines on Human Rights and Drug Control*⁵⁸ together with Damon Barrett. Both contributed to the 2023 Commentary on the International Guidelines on Human Rights and Drug Policy. Barrett is the other co-founder of the International Centre on Human Rights and Drug Policy. He has also been involved with the International Harm Reduction Association.⁵⁹

⁵¹ https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf

⁵² See About the Centre, <https://www.hr-dp.org/about>

⁵³ About the Centre, <https://www.hr-dp.org/about>

⁵⁴ About the Centre, <https://www.hr-dp.org/about>

⁵⁵ <https://www.swansea.ac.uk/staff/richard.lines/>

⁵⁶ <https://www.swansea.ac.uk/staff/richard.lines/>

⁵⁷ *Health and Human Rights Journal*, vol. 19, no. 1 (2017), pp. 231–278.

⁵⁸ Rick Lines and Richard Elliott and Julie Hannah and Rebecca Schleifer and Tenu Avafia and Damon Barrett, *The Case for International Guidelines on Human Rights and Drug Control* (March 8, 2017), p.231. *Health and Human Rights Journal* (2017), Faculty of Law, Stockholm University Research Paper No. 9, Available at SSRN: <https://ssrn.com/abstract=2942603>

⁵⁹ <https://www.theguardian.com/profile/damon-barrett>.

The HRDP's website also include a long list of the members of the International Advisory Committee.⁶⁰ Several of these members were probably either directly involved with the Guidelines or their positions are quoted by this document.

Moreover, as stated on the International Centre on Human Rights and Drug Policy, Human Rights Centre, University of Essex's page, the HRDP has been involved not only in the development of the Guidelines but also "The HRDP has worked with the Committee on Economic, Social, and Cultural Rights to develop their assessment of States compliance with the International Convention on Economic Social and Cultural Rights throughout the reporting period. Critically, the Committee used the work produced by the HRDP to engage the governments...on issues related to drug control... Barrett has through his PhD research on the rights of the child and drug policy engaged in a constructive dialogue with the Committee on the Rights of the Child."⁶¹ The Concluding Observations on States Parties Reports generated by these HRDP's collaborations with UN treaty bodies is later quoted in the Guidelines and presented as authoritative "soft law" generating a self-quoting machinery.

The Guidelines' website also posts an indirect/negative answer to the question *Who wrote the guidelines?* Instead of listing the author's names, it states that "There is no single author of the Guidelines. They are the result of a multi-year collaborative effort between academics, UN entities and civil society."⁶² Further clarification is supposed to come from the Guidelines' Annex II describing the Guidelines' Methodology.

Given the above-mentioned disclaimer included in the 2019 Guidelines, the UN entities involvement in this project is left in a grey area. The Methodology Annex provides no authors names but reassures that "eminent experts" and academics were involved. In this context, it is worth looking at what can be deduced in terms of authorship and at the NGOs mentioned directly or indirectly by the Guidelines' Annex II. The same circular movement and engagement in the self-quoting machinery could be seen in relation to these categories. All NGOs⁶³ and almost all deducible authors have been previously engaged in the illicit drugs control reform agenda. Few such authors also worked, at certain times, with various UN entities, bodies or with Special Procedures of the Human Rights Council. These UN entities, bodies or Special Rapporteurs' positions assuming the same illicit drugs reformist agenda are later quoted by the Guidelines.⁶⁴

⁶⁰ International Advisory Committee. <https://www.hr-dp.org/international-advisory-committee>

⁶¹ <https://www.essex.ac.uk/research-projects/international-centre-on-human-rights-and-drug-policy>

⁶² Who wrote the Guidelines? <https://www.humanrights-drugpolicy.org/about/>

⁶³ See for example The Canadian HIV/AIDS Legal Network and Harm Reduction International are mentioned as collaborators in the development of the Guidelines and as providers of additional support. The Canadian HIV/AIDS Legal Network, which recently changed its name to HIV Legal Network, is an organization with a long history and an obvious advocate for "harm reduction" and drug control reform. Harm Reduction International, formerly known as the International Harm Reduction Association (IHRA), is another organization with a long and history of drug reform activism and lobbying towards regulation and legalization of illicit drugs.

⁶⁴ As it is the case with the above-mentioned NGOs, most of the experts involved are names that have been associated with the drug control reform agenda as:

Joanne Csete, previously mentioned as Board Member of Asia Catalyst and researcher for the Open Society Public Health Program and Global Drug Policy Program, and Executive Director of the Canadian HIV/AIDS Legal Network another entity involved in the Guidelines. Csete was also involved in UNDP papers dealing with drug policy. <https://www.opensocietyfoundations.org/voices/red-cross-weighs-in-on-drug-criminalization> <https://publichealth.jhu.edu/center-for-public-health-and-human-rights/research/program-for-implementation-and-equity-research/past-projects/lancet-commission-on-public-health-and-international-drug-policy> Csete was also involved in UNDP papers dealing with drug policy. See for example Addressing the Development Dimensions of Drug Policy, June 2015, this UNDP paper was issued by Rebecca Schleifer in collaboration with other people <https://www.undp.org/sites/g/files/zskgke326/files/publications/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

Given how polarized the debate on drug control has been for a number of years, it is remarkable that not even the smallest attempt was done, in elaborating the 2019 Guidelines, to ensure a democratic representation of UN entities, civil society or academics' various opinions. One cannot find in relation to the Guidelines any names of civil society, academics, stakeholders or UN entities reflecting any alternative position to the message permeating the whole document, namely that the drug control must be reformed, and its almost exclusive focus on people who use drugs, people who are affected by drug addiction or people who are involved in a way or another in the illicit drugs supply economy.

In conclusion, as the Methodology Annex informs that "A group of experts developed several background papers that framed some of the key thematic issues and helped inform various aspects of the Guidelines... This work was peer reviewed and published in a special

Joanne Csete is also mentioned as one of the authors/participants of the HIV/AIDS and Human Rights, International Guidelines, Revised Guideline 6m Access to prevention, treatment, care and support, UNITED NATIONS PUBLICATION, English original, August 2002.

Daniel Wolfe was until December 2021 the director of the International Harm Reduction Development Program at the Open Society Foundations. <https://www.opensocietyfoundations.org/voices/chance-get-drug-policy-right>

Rebecca Schleifer, who together with D. Barrett, J. Hannah, R. Lines, and S. Murphy issued in 2023 a *Commentary to the Guidelines*,⁶⁴ is another Visiting Fellow Human Rights Centre, University of Essex. She previously worked with Human Rights Watch and collaborated with Harm Reduction International, and as Advocacy Director, Health and Human Rights Division and as Consultant, HIV, Human Rights and the Law with the UNDP.

R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, Commentary on the International Guidelines on Human Rights and Drug Policy (2023).

https://www.academia.edu/145287989/Commentary_on_the_International_Guidelines_on_Human_Rights_and_Drug_Policy?email_work_card=title

<https://www.essex.ac.uk/centres-and-institutes/human-rights/people/fellows>

Julie Hannah who is a special editor together with Rick Lines, is another person associated with University of Essex as the Director of the International Centre on Human Rights and Drug Policy based at the Human Rights Centre.

<https://www.essex.ac.uk/people/HANNA91804/Julie-Hannah>

"From 2015-2020, Julie was the Senior Advisor to the United Nations Special Rapporteur on the Right to Health. Since 2012, Julie has supervised a range of projects in the Human Rights Centre Clinic, which has involved the production of research for UN human rights mechanisms, national and global networks of people who use drugs, and a range of social justice focused civil society actors." <https://www.essex.ac.uk/people/HANNA91804/Julie-Hannah>

During 2015-2020 the UN Special Rapporteur on the Right to Health was Dainius Pūras, who previously was a Member of the UN Committee on the Rights of the Child, 2007-2011. He is, at present, a member of the International Centre on Human Rights and Drug Policy's International Advisory Committee. International Advisory Committee, <https://www.hr-dp.org/international-advisory-committee>

Richard Elliott is another "prominent advocate for drug policy reform" and former Executive Director of Canadian HIV/AIDS Legal Network, AKA HIV Legal Network. According to the website of the organization "Richard now works as a consultant, focusing on HIV, health and human rights, including for the Legal Network, UNAIDS, the Global Fund to fight AIDS, Tuberculosis and Malaria, and other organizations... On behalf of the HIV Legal Network, he served as secretariat to the UNAIDS Reference Group on HIV and Human Rights for several years. He is currently the Chair of the Supervisory Board of the HIV Justice Network, and a member of the International Advisory Committee of the International Centre for Human Rights and Drug Policy." <https://www.hivlegalnetwork.ca/site/richard-elliott/?lang=en>

Other names are associated with the Open Society Foundations, See for example Duncan Wilson, Project director with the Public Health Program, Open Society Foundations, New York, USA. <https://pmc.ncbi.nlm.nih.gov/articles/PMC5473053/>

Jennifer J. K. Rasanathan, Senior Program Officer with the Public Health Program at the Open Society Foundations and is affiliated with the [International Centre on Human Rights and Drug Policy](https://www.essex.ac.uk/centres-and-institutes/human-rights/people/fellows) <https://pubmed.ncbi.nlm.nih.gov/28207337/#full-view-affiliation-1>

Others are associated to International Centre on Human Rights and Drug Policy, Mary Kapron is a Research Associate at the International Centre on Human Rights and Drug Policy

<https://www.hr-dp.org/contents/1589>, Release, *Edward Fox*, Release's Policy and Communications Manager. He served as technical advisor on the latest Global Commission on Drug Policy report, and has guest-lectured at the University of London on drug policy and human rights. <https://www.opendemocracy.net/en/author/edward-fox/>,

Harm Reduction International or combinations of these organizations. Naomi Burke-Shyne, former Executive Director of Harm Reduction International and social justice advocate.

[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(25\)01593-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(25)01593-4/fulltext)

Naomi previously worked for the Open Society Foundations Public Health Program

<https://www.graduateinstitute.ch/discover-institute/naomi-burke-shyne>

section on human rights and drug control in the June 2017 issue of *Harvard University's Health and Human Rights Journal*"⁶⁵, and given the disclaimer and the lack of any other information, it could be assumed that the authorship of the 2017 *Harvard University's Health and Human Rights Journal* special section on human rights and drug control editorial and articles, or at least some of these authors, are in fact the authorship of the Guidelines.⁶⁶

5. Human rights law or human rights language?

It is also worth noting that the Guidelines were written in a quite opaque fashion. Borrowing from the "hard law" wording authority of the UN Human rights conventions, the 2019 Guidelines cuts out various incomplete paragraphs of several human rights provisions, or offers roundabout formulas. It adds to these "rights" the groups which the document focuses on or is meant to serve, in most cases "people who use drugs", including "recreationally",⁶⁷ or people involved in one way or another in illicit drugs economy. Almost any reference to limitation clauses or other least convenient parts of the respective human rights provision are eliminated, and the context of each provision is always left out in Chapter II Obligations Arising from Human Rights Standards and Chapter III Obligations Arising from the Human Rights of Particular Groups.

Human rights provisions are not issued alone in a one article at the time manner, and they should not be interpreted in a void. They belong to certain treaties and must be interpreted in a holistic manner. As stated by the Committee on Economic, Social and Cultural Rights, States Parties have a duty to implement their obligations under a certain provision together with their obligations under other provisions of the respective treaty and international instruments, "in order to promote and protect the entire range of human rights guaranteed under international law."⁶⁸ Or, as the same treaty body also emphasized in another General Comment- "a restrictive interpretation is contrary to a systematic and teleological interpretation of this right, which takes into account the context, the object and the purpose of this provision, in accordance with article 31 of the Vienna Convention on the Law of Treaties."⁶⁹

According to Article 31 Vienna Convention on the Law of the Treaties "treaties shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."⁷⁰ These elements, namely good faith and ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose, are often difficult to find in the text of the 2019 Guidelines.

⁶⁵ International guidelines on human rights and drug policy, Annex II: Methodology, p.27. <https://www.humanrights-drugpolicy.org/methodology/>

⁶⁶ See footnote 56.

⁶⁷ See for example the right to enjoy cultural life. International guidelines on human rights and drug policy, p.14.

⁶⁸ See for example, Committee on Economic, Social and Cultural Rights, General comment No. 21

Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, December 2009, C. Limitations to the right to take part in cultural life, para 17.

<https://docs.un.org/en/E/C.12/GC/21>

⁶⁹ Committee on Economic, Social and Cultural Rights, General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/25, April 2020II. Normative content, para. 9.

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F25&Lang=en

⁷⁰ Vienna Convention on the Law of Treaties, 1969.

The Guidelines has a section on treaty interpretation principles addressing “harmonisation and simultaneous compliance with human rights obligations”⁷¹ and “standards for limitations on rights.”⁷² However, this section is more of an incomplete theoretical exercise leaving the reader or implementer to guess how the mentioned principles and treaty interpretation system of rules should be operationalised in relation to the human rights provisions listed in the 2019 Guidelines and the included recommendations. Operationalization is one of the main purposes of a guidelines.

For example, as right to health does not mean having the right to be healthy, right to privacy is not formulated as people having the right to privacy in Article 12 Universal Declaration of Human Rights⁷³ or by Article 17 International Covenant on Civil and Political Rights,⁷⁴ but in a more nuanced manner. The Guidelines formulates it as “Everyone has the right to privacy, including people who use drugs”⁷⁵ without any reference to the source of such right, its meaning, or its limitations. Immediately after the above-mentioned privacy axiom, the Guidelines proceeds to recommendations written in terms of “‘should’ reflecting ‘the authoritative sources underpinning the Guidelines, but without making claims as to binding law’”⁷⁶ and in terms of “may” in this case. Again, the sources of these recommendations are not specified either.

In the case of the right to privacy, as in many other rights included in the Guidelines the “may” recommendation is “Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.” Without further explanations on where such right is stipulated and how the authors reached the issued recommendations, it is rather difficult to see how this recommendation is “more human rights compliant” and how it is compliant with human rights norms overall, and with international legal norms that limit such possession to medical and scientific purposes.

The formula is the same for all other “rights” included in the Guidelines- the only difference is that for some the recommendations are formulated in terms of “shall.” According to the Guidelines’ Terminology section “‘shall’ a clear legal standard that necessitates the stronger formulation” or in some places, a permissive norm allows States to take steps that may be more human rights compliant. In these cases, the word ‘may’ is used.”⁷⁷ No sources are indicated in case of “should”, “shall” or “may.”

People involved in one way or another with illicit drugs, do of course, have a right to protection of the law against “arbitrary interference with his privacy, family, home or correspondence” and against “attacks upon his honour and reputation” as stipulated by Article

⁷¹ International guidelines on human rights and drug policy, V. TREATY INTERPRETATION PRINCIPLES, p.23, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf

⁷² International guidelines on human rights and drug policy, V. TREATY INTERPRETATION PRINCIPLES, p.23, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf

⁷³ Art 12 “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

⁷⁴ Art 17 “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁷⁵ International Guidelines on Human Rights and Drug Policy,

⁷⁶ International Guidelines on Human Rights and Drug Policy, Terminology, p.5, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

⁷⁷ International Guidelines on Human Rights and Drug Policy, Terminology, p.5, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

17 International Covenant on Civil and Political Rights, or other relevant human rights provisions.⁷⁸ However, it should be noted that the right to privacy is not a blank check for anybody to do whatever. Neither the right to privacy nor some other rights invoked in the Guidelines, are absolute. Actually, “relatively few rights can be enjoyed in absolute terms. Most rights are subject to limitations that are necessary and reasonable in a democratic society for the realization of certain common goods such as social justice, public order and effective government or for the protection of the rights of others.”⁷⁹

In the case of the right to privacy “Any instance of interference must be provided by law and subject to a careful and critical assessment of its necessity and proportionality.”⁸⁰ Most illicit drugs related activities are deemed as illegal at national and international levels.

The Guidelines’ “more human rights compliant” recommendation “Utilise the available flexibilities in the UN drug control conventions to decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption”⁸¹ is issued by the authors of the Guidelines in five instances including in the context of the highest attainable standard of physical and mental health, the right to privacy, right to freedom of thought, conscience, and religion and in relation to the statement “Women who use drugs have the right to access health care, including sexual and reproductive care, on a non-discriminatory basis”⁸² and to the right of “indigenous peoples have the right to their traditional medicines and to maintain their traditional health practices.”⁸³ Where these are coming from is difficult to comprehend without further references and the text of the Guidelines, predicably, offers none.

6. The Guidelines and its expert analysis- the 2023 Commentary

The declared Guidelines’ target groups are “those working to ensure human rights compliance at local, national, and international levels, including parliamentarians, diplomats, judges, lawyers, policy makers, civil society organisations and affected communities.”⁸⁴ In this context and given the way the Guidelines text was written, and the fact that the sources of the rights and of the recommendations are difficult to identify, the text is hard to navigate for most categories mentioned.

A Commentary to the Guidelines was issued in 2023 by R. Schleifer, D. Barrett, J. Hannah, R. Lines and S. Murphy.⁸⁵ It states that “Developed alongside the Guidelines as part of the consultative process, this Commentary offers an expert analysis of the Guidelines. It

⁷⁸ The right to privacy is also stipulated by Art. 16 Convention on the Right of the Child and Art. 14 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁷⁹ Ahmed Dawood & Bulmer Elliot W., Limitation Clauses, International Idea Constitution-Building Primer, 2014, p. Ahmed, Dawood & Bulmer, Elliot W. (2014), Limitation Clauses, International Idea Constitution-Building Primer, www.idea.int/publications/catalogue/limitation-clauses. www.idea.int/publications/catalogue/limitation-clauses.

⁸⁰ International standards, OHCHR and privacy in the digital age <https://www.ohchr.org/en/privacy-in-the-digital-age/international-standards>

⁸¹ International Guidelines on Human Rights and Drug Policy, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

⁸² International Guidelines on Human Rights and Drug Policy, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

⁸³ International Guidelines on Human Rights and Drug Policy, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

⁸⁴ <https://www.humanrights-drugpolicy.org/about/>

⁸⁵ R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, Commentary on the International Guidelines on Human Rights and Drug Policy (2023). https://www.humanrightsdrugpolicy.org/site/assets/files/3204/guidelines_with_commentary_and_references.pdf

provides the normative foundation for the Guidelines and articulates their reasoning and interpretation based on existing international human rights jurisprudence.”⁸⁶ More often than not, the Commentary is needed to grasp the sense of the Guidelines. However, this sequencing raises questions on how was the Guidelines implemented from 2019 to 2023 without any references to the source of the mentioned human rights or explanations about the recommendations?

It should be noted that, the Commentary also carries a more detailed disclaimer stating that “The views expressed in this commentary are those of the author(s) and do not represent those of the United Nations, including its subsidiary organs and/or its specialized agencies, donor agencies, or the UN Member States. The designations employed and the presentation of the information in this commentary do not imply the expression of any opinion whatsoever on the part of the United Nations, including its subsidiary organs and/or its specialized agencies, concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.”⁸⁷ This second disclaimer reconfirms that the circle of Guidelines’ authors is tighter than the text might wish to suggest.

The 2019 Guidelines and its only explanatory element, the 2023 Commentary are, at times, unexpected. One illustrative example is the principle of universality and interdependence of rights stated by the Guidelines in chapter I. Foundational Human Rights Principles, 2. Universality and interdependence of rights. This principle is formulated in the Guidelines as “Human rights are universal, inalienable, indivisible, interdependent, and interrelated, including in the contexts of drug policy, development assistance, health care, and criminal justice. A person’s involvement in drug-related criminality affects the enjoyment of some rights and specifically engages others. In no case are human rights entirely forfeited.”⁸⁸

Most probably, without human rights expertise these paragraphs sound right but have limited sense. Their meaning and where they are coming from could be unclear. Therefore, the recourse to the Commentary is crucial. However, the Commentary provides us in relation to this principle a surprising explanation, namely “The Universal Declaration of Human Rights is based on an understanding that human rights are grounded in the inherent dignity of the human person and are therefore universal and inalienable. This means that irrespective of ethnicity, gender, social or other status, or lifestyle choice, ‘all human beings are born free and equal in dignity and rights’”.⁸⁹ The Commentary send us to the UDHR Article 1. In reality, UDHR Article 1 reads “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁹⁰ Article 1 UDHR states the principle of universality and inalienability, but it is difficult to link it in any way to the concept of “lifestyle choices”.

⁸⁶ R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, Commentary on the International Guidelines on Human Rights and Drug Policy (2023).

https://www.humanrightsdrugpolicy.org/site/assets/files/3204/guidelines_with_commentary_and_references.pdf

⁸⁷R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, Commentary on the International Guidelines on Human Rights and Drug Policy (2023).

https://www.humanrightsdrugpolicy.org/site/assets/files/3204/guidelines_with_commentary_and_references.pdf

⁸⁸ International Guidelines on Human Rights and Drug Policy, Sources, p.6, https://www.humanrights-drugpolicy.org/site/assets/files/1640/hrdp_guidelines_2020_english.pdf.

⁸⁹ R. Schleifer, D. Barrett, J. Hannah, R. Lines, S. Murphy, Commentary on the International Guidelines on Human Rights and Drug Policy (2023), p.9.

⁹⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 1.

Taking in consideration the time, purpose, and content of the Universal Declaration of Human Rights (UDHR) it is difficult to see how the concept “lifestyle choices” fits in at all. The UDHR was adopted in 1948, in response to the atrocities committed during Second World War. As stated in the Declaration’s Preamble “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.”⁹¹ As expected, there was very little concern at that time for “lifestyle choices.”

Actually, this concept seems rather foreign to human rights law in general. Looking at the nine core human rights conventions and the issues or categories they address it is difficult to find place for such a concept: the two covenants provide a legally binding codification of the rights listed in the Universal Declaration of Human Rights, the other conventions address issues such as racial discrimination, discrimination against women, torture and other cruel, inhuman or degrading treatment or punishment, enforced disappearance, or focus on vulnerable categories as children, persons with disabilities and migrant workers and members of their families whose vulnerability is certainly not linked to their “lifestyle choices.”

Even in the context of illicit drugs, it is overall unclear what type of “involvement in drug-related criminality” the authors of the Guidelines and of the Commentary have in mind when writing the above-mentioned. There seems to be not many lifestyle choices for people suffering from substance use disorders or for a majority of the people involved in a way or another in the supply side of the illicit drugs. The only category that seems to have a real choice is the “recreational illicit drug users” and few individuals high in the hierarchy of the illicit drugs supply side.

The drug conventions⁹² or the resolutions adopted by the UN in relation to the amendment of the Single Convention see it more correlated with the “deplorable social and economic conditions in which certain individuals and certain groups are living”⁹³ than a matter of lifestyle choices.

Moreover, the Commentary implicit suggestion that illicit drug use or the involvement into illicit drug economies are “lifestyle choices” is difficult to link to their larger social, political, economic and security consequences, and how are these to be seen in the context of “should act towards one another in a spirit of brotherhood” that UDHR Article 1 state. It is also problematic to understand how this concept falls in the same category with “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” that UDHR Article 2 enumerates.

The core principles of human rights first set out in the UDHR, such as universality, interdependence and indivisibility, equality and non-discrimination, and that human rights simultaneously entail both rights and obligations from duty bearers and rights owners,⁹⁴ The Guidelines throughout the text amplify individual rights while largely glossing over the duties and responsibilities aspect of human rights. The same is the case with the illicit drugs control reform literature which perpetuates an imbalanced idea of human rights.

⁹¹ Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), Preamble.

⁹² See for example the Preamble of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

⁹³ Resolutions Adopted by the United Nations Conference to Consider Amendments to The Single Convention on Narcotic Drugs, 1961, especially Resolution III Social Conditions and Protection Against Drug Addiction, https://www.unodc.org/pdf/convention_1961_en.pdf

⁹⁴ The Foundation of International Human Rights Law, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>

6. Conclusions

In conclusion, what we have is a text-the Guidelines intended to advise UN Member state on human rights compliance, to “transform and reshape global responses to the world drug problem,”⁹⁵ and to bring about “legal reforms and policy change” in terms of drug control. The document carries four UN entities logos and one of a civil society, the HRDP, and a disclaimer which exonerate the UN and its entities of any responsibility in relation to this text and the views expressed within.

Moreover, the Guidelines are written in a manner that is difficult to understand and reference without using the Commentary which carries another disclaimer that again limits any UN liability and locate the authorship and responsibility of the opinions to few authors affiliated to HRDP and other organizations caring the torch of illicit drugs regulations and legalization, or of the demolition of the UN drug control regime. Should such authorship give “authoritative support for legal reforms and policy change” and prescribe “measures States should undertake or refrain from undertaking”?⁹⁶

At the minimum, the relation of the Guidelines to the UN and the source of the Guidelines’ authority must be clarified. At best, the Guidelines must be rewritten.

The aim of a guidelines is to provide guidance in full conformity with the rule of law principle. Guidelines should clarify State Parties’ obligations according to the legal frameworks in force and quote all relevant jurisprudence. Moreover, such guidelines should not aim at legal reform outside the mechanisms prescribed by law. Such guidelines should not invent or promote new rights that contradict, minimise or deny the present sets of rights stipulated by legal instruments. The risk with accepting approaches that circumvent basic legal principles and introduce “rights” through the back door is that his might affect an international legal architecture which is already fragile and create a precedent for other international law regimes.

⁹⁵ R. Schleifer, J. Hannah, and D. Barrett, *Influencing Rights-Based Drug Policy Reform: The International Guidelines on Human Rights and Drug Policy in Action*, International Guidelines on Human Rights and Drug Policy, Implementation Series No. 2 (2023), p.5

⁹⁶What are the Guidelines? <https://www.humanrights-drugpolicy.org/about/>