



**HARM REDUCTION**  
INTERNATIONAL

# **COMMANDING GENERAL CONFIDENCE?**

## **Human Rights, International Law and the INCB Annual Report for 2011**

12th March 2012

### **A Briefing for CND Delegations**

This note provides an overview of human rights and international law concerns raised by the 2011 Annual Report of the International Narcotics Control Board. These include questionable legal reasoning by the Board; the absence of broader human rights norms; problematic statements on specific issues; unqualified comments and support for policies despite human rights risks; and stigmatising language unbecoming a UN entity. These are patterns that are evident in previous Annual Reports.

Article 9 of the 1961 Single Convention on Narcotic Drugs states that 'Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence'. The 2011 Annual Report of the INCB shows that, as an entity, the Board is failing to live up to the standards to which all members should be held under the terms of the 1961 Single Convention. It is time to ask whether the INCB, without basic reforms, can continue to 'command general confidence'.



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# 1. BOLIVIA AND TRADITIONAL USES OF COCA

In this year's annual report the Board has devoted considerable attention to Bolivia's denunciation of and proposed re-accession to the 1961 Single Convention with a reservation on coca chewing.<sup>1</sup> However, the Board's legal reasoning is ill-informed, and its reading of Bolivia's concurrent international legal obligations in this regard is non-existent.

The Board expresses its concern that while the course of action taken by Bolivia is *'technically permitted under the Convention, it is contrary to the fundamental object and spirit of the Convention'*.<sup>2</sup> But if the reservation is permitted then it is difficult to argue that it would run contrary to the *'object and spirit'* (sic) of the Convention. What the INCB appears to be referring to here is the illegality of reservations that are contrary to the *'object and purpose'* of a treaty, under article 19 of the Vienna Convention on the Law of Treaties. The Board, however, concedes the legality of the reservation. In essence, the Board is making a value judgment with no basis in law. This is the essence of arbitrariness.

Added to this, and perhaps most importantly, the Board neither mentions nor considers the many other international legal obligations and basic norms of human rights and indigenous peoples rights operating concurrently and that render Bolivia's action not only *permissible* (as the Board concedes) but *necessary* to resolve conflicts. These include: The International Covenant on Civil and Political Rights (ICCPR, 1966); The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966); The International Convention on the Elimination of All forms of Racial Discrimination (CERD, 1965); ILO Convention 169 - Indigenous and Tribal Peoples Convention (1989); UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003).<sup>3</sup> All have been ratified or acceded to by Bolivia.

According to the UN Permanent Forum on Indigenous Issues (UN PFII) in 2009, *'those portions of the [1961] Convention regarding coca leaf chewing that are inconsistent with the rights of indigenous peoples to maintain their traditional health and cultural practices, as recognized in articles 11, 24 and 31 of the [Indigenous Peoples] Declaration, be amended and/or repealed'*<sup>4</sup>

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1 International Narcotics Control Board, Annual Report for 2011, paras 270-280 (Hereafter '2011').

2 2011, para 279.

3 For more detail see D. Barrett 'Bolivia's concurrent drug control and other international legal commitments', International Centre on Human rights and Drug Policy, July 2011 <http://www.humanrightsanddrugs.org/2011/07/briefing-on-bolivia-s-concurrent-drug-control-and-other-international-legal-commitments/>.

4 Report of the Eighth Session of the UN Permanent Forum on Indigenous Issues 18-29 May 2009, (UN Doc No E/2009/43 - E/C.19/2009/14), para 89.

## 2. THE CANADIAN SUPREME COURT DECISION ON 'INSITE'

In 2011 the Canadian Supreme Court handed down its unanimous verdict on the Government's refusal to grant an exemption under the Controlled Drugs and Substances Act to permit Vancouver's safe injection facility (Insite) to remain open. The Court ruled strongly against the government and directed that it provide Insite with such an exemption. The INCB has criticised the decision stating that '*under international law, provisions of national law cannot be invoked to justify non-compliance with the international drug control treaties to which a State has become a party*'. It is an argument made numerous times in the report.<sup>5</sup> Here the Board is referring to article 27 of the Vienna Convention on the Law of Treaties. This statement is broadly true – States parties should not use national law to justify non-compliance with treaty obligations. But the situation is more complicated than the Board has portrayed, and more importantly, it is not relevant to the Canadian Supreme Court decision by virtue of the terms of drug conventions themselves.

The relevant provision relating to the possession of illicit substances for personal use is article 3(2) of the 1988 treaty. However, the provision is prefaced by the statement that they are '*Subject to [the State party's] constitutional principles and the basic concepts of its legal system*'.<sup>6</sup> In the case of Insite, the Supreme Court was ruling on Canada's Charter of Rights and Freedoms, which forms part of the country's Constitution.<sup>7</sup> Under the very terms of the drug conventions the locus of the legality of the exemption granted to Insite is that Charter. As such there is no conflict between national and international law in this case.

Similar wording is contained in the 1961 Single Convention and relates also directly to Bolivia's proposed reservation on the 1961 Convention given the terms of Bolivia's constitution.<sup>8</sup> Again, this is not addressed by the Board.

The INCB is also of the view that '*drug injection and consumption outlets that allow illicit drug possession and use are not in line with the international drug control conventions, to which Canada is a party*'. However, in 2002, following a request for advice from the INCB, the UN Drug Control Programme advised the Board that safe injection facilities did not breach the conventions.<sup>9</sup>

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<sup>5</sup> See 2011 paras 281, 287, 289.

<sup>6</sup> Article 3(2), 1988 reads: *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, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention*

<sup>7</sup> Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44, [2011] 3 S.C.R. 134 <http://scc.lexum.org/en/2011/2011scc44/2011scc44.html>.

<sup>8</sup> Article 36(1)(a) of the 1961 Single Convention reads: *Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that 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, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.*

<sup>9</sup> International Narcotics Control Board, 'Flexibility of treaty provisions as regards harm reduction approaches, Prepared by the Legal Affairs Section, UNDCP, (Decision 74/10)' UN Doc No E/INCB/2002/W.13/SS.5 (Restricted) 30 September 2002.

### 3. THE DEATH PENALTY FOR DRUG OFFENCES

At the launch of the INCB's 2011 report in Thailand, a Board member was asked about plans by the Deputy Prime Minister to speed up the executions of some 360 people on death row for drug offences in the country. In response, the Board member present, Mr Viroj Sumyai said '*We are an impartial body and respect the rule of law and jurisdiction of countries*'<sup>10</sup> Harm Reduction International contacted the Secretariat of the INCB seeking clarification on the news report, to ascertain whether the story accurately reflected the Board's position. In its reply, the INCB Secretariat confirmed that it was, writing that, '*[T]he determination of sanctions applicable to drug-related offences remains the exclusive prerogative of each State and therefore lie beyond the mandate and powers which have been conferred upon the Board by the international community*'.

As with Bolivia and coca, the Board has failed appreciate broader international legal obligations at play. In this case, that the UN Human Rights Committee and other authoritative UN human rights bodies have deemed the death penalty for drug offences to violate international law, in particular article 6(2) of the International Covenant on Civil and Political Rights (ICCPR).<sup>11</sup> Indeed, this was said of Thailand specifically in 2005 by the UN Human Rights Committee.<sup>12</sup> State practice supports this view, with so few countries having the death penalty for drugs in law, even fewer using it, and fewer still executing people for drugs.<sup>13</sup>

The Board's position highlighted by this recent episode has prompted high profile international lawyers, including two former UN Special Rapporteurs on Torture, to write to CND members in advance of the 55<sup>th</sup> session expressing their concerns about the INCB's refusal to take a view of the death penalty.

### 4. THE 'RIGHT TO BE FREE FROM ADDICTION'

According to the President of the Board in his foreword, in providing for treatment and rehabilitation, the drug conventions recognise that '*being free from addiction is a human right*'.<sup>14</sup> It is the only substantive mention of human rights in the entire report. However, as expressly stated by the Committee on Economic Social and Cultural rights in its influential General Comment on the right to health '*The right to health is not to be understood as a right to be healthy*'.<sup>15</sup> What the INCB has failed to recognise is that human rights are legally enforceable. To claim that a person has a right to be free from addiction is, in effect, to say that every time someone becomes drug dependent the State in question is in violation of its human rights obligations. Being free of addiction is certainly a laudable personal or policy goal, but it is not a human right. Instead, it is drug treatment, rehabilitation and harm reduction that are specifically recognised as components of the right to health. Correspondingly it is the absence of available, accessible, acceptable and sufficient quality services that renders a state in breach, not the presence of addiction.<sup>16</sup>

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10 INCB neutral on capital punishment', Bangkok Post, 28 February 2012.

11 For an overview see R. Lines 'A most serious crime? The death penalty for drug offences and international human rights law' 21 *Amicus Journal* (2010) pp. 21-28.

12 UN Human Rights Committee, *Concluding Observations: Thailand* (UN Doc No CCPR/CO/84/THA, 2005), para 14.

13 P. Gallahue 'The death penalty for drug offences: Global overview 2011 – Shared responsibility and shared consequences' Harm Reduction International, 2011.

14 2011, p. iii

15 2011, para 8.

16 See generally Committee on Economic Social and Cultural Rights, *General Comment No. 14: The right to the highest attainable standard of health*, (UN Doc

## 5. DRUG DETENTION CENTRES

There is an additional problem with asserting a right to be free from addiction, in that it could lead to a justification for forced treatment, claiming that this is aimed at the realisation of human rights. This is not helped by the fact that the Board in this year's report has made unqualified statements about drug detention centres, and drug treatment in specific countries. In relation to China, for example, the Board simply notes that '*compulsory treatment centres, together with community-based treatment units, provided drug treatment and rehabilitation services to about 360,000 drug abusers in 2010, a significant increase from 2009*'.<sup>17</sup> But such centres have been widely exposed as subjecting people to arbitrary detention, forced labour, beatings and other rights abuses.<sup>18</sup>

A UN system-wide statement has been issued by twelve agencies, including UNODC, calling for such centres to be shut down.<sup>19</sup>

The INCB, however, has failed to condemn such centres or to acknowledge abuses amounting to torture in some of them. Indeed, in relation to Viet Nam, the Board says that it '*welcomes the steps taken in Viet Nam to improve the treatment and rehabilitation of drug abusers*' and in the same paragraph '*encourages the Government to reinforce and support existing facilities*'.<sup>20</sup> Existing facilities include detention centres housing tens of thousands of people without due process and within which human rights abuses are rife. This comment by the INCB comes after the UN Special Rapporteur on the Right to Health raised concerns about drug treatment and detention centres during his mission to Viet Nam,<sup>21</sup> and NGO reports documenting appalling human rights abuses in such centres.<sup>22</sup> These are issues that will be raised at a future session of the UN Human Rights Council.

As with the death penalty, it is unclear whether the Board supports or opposes such centres, contrary to the views of UN human rights monitors<sup>23</sup> and the wider UN system.

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No. E/C.12/2000/4, 2000).

17 2011, para 583.

18 See, for example, Human Rights Watch 'Where darkness knows no limits: Incarceration, Ill-Treatment and Forced Labor as Drug Rehabilitation in China' January, 2010.

19 'Compulsory drug detention and rehabilitation centres' Joint Statement by International Labour Organisation; Office of the High Commissioner for Human Rights; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organisation; United Nations Population Fund; United Nations High Commissioner for Refugees; United Nations Children's Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organisation; and Joint United Nations Programme on HIV/AIDS, 8 March 2012.

20 2011, para 117.

21 OHCHR, 'UN independent expert urges Viet Nam to close down compulsory rehabilitation centres for drug users and sex workers' <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11685&LangID=E>

22 Human Rights Watch, 'The rehab archipelago: Abuses in Vietnam drug detention centres' October 2011.

23 On Cambodia's centres, see Committee on the Rights of the Child, *Concluding Observations: Cambodia* (UN Doc No CRC/C/KHM/CO/2, 2011) paras 55 & 56.

## 6. STIGMATISING LANGUAGE

The risk posed by detention centres and the ambiguity of the Board on its view of such abusive measures is exacerbated by the Board's consistent use of stigmatising language throughout the report. The word 'abuser' appears almost a hundred times, sometimes up to three times in single sentences, to describe people who use drugs. The phrase 'drug abuser' is dehumanising and contributes to the stigma and related discrimination faced by people experiencing drug dependency. It is a term that should drop from the UN lexicon

Lessons must be learned from the HIV/AIDS field where the value and importance of language and its influence on stigma and related discrimination has been long understood. The phrase more commonly used, and as recommended by UNAIDS, is 'people who use drugs' to reflect the fact the first and foremost we are talking about people, who are not the sum total of their drug use.<sup>24</sup>

## 7. HIV-RELATED HARM REDUCTION

Contrary to human rights guidance from various UN monitors, which now recognises that HIV-related harm reduction is a component of the right to health,<sup>25</sup> the Board has adopted anti-harm reduction stances in places within the report. This is clearest in the Board's recommendation to governments that *'Treatment should be based on enabling individuals to become drug-free rather than on simply seeking to reduce some of the harm associated with continued levels of drug misuse'*.<sup>26</sup> Instead of suggesting priorities, this is a clear cut either/or argument that has no place in UN documents based on scientific evidence and best practice, and an unwarranted attack on effective harm reduction interventions.

The Board is also contradictory on opioid substitution therapy (OST). In the case of Mauritius, such treatment is inexplicably equated with 'drug abuse', despite being on the WHO model essential medicines list, and a core component of the HIV response promoted by UNODC, WHO and UNAIDS. According to the Board *'With regard to the existing methadone substitution programmes that are being conducted in Mauritius, the Board invites the Government to increase the provision of psychosocial support and to find ways of guiding drug abusers towards reducing their drug intake so that they may eventually stop abusing drugs'*.<sup>27</sup> While psychosocial programmes are of course important, to equate OST – a medical use of opioids that is completely licit under the Conventions – with 'abuse', is unjustifiable.

Later in the report, conversely, OST is simply noted as taking place, without comment.<sup>28</sup>

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24 See UNAIDS Terminology Guidelines [http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118\\_terminology-guidelines\\_en.pdf](http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2118_terminology-guidelines_en.pdf)

25 See for example: Committee on Economic Social and Cultural Rights, *Concluding Observations: Tajikistan* (UN Doc No E/C.12/TJK/CO/1, 2006) para 70; *Ukraine* (UN Doc No E/C.12/UKR/CO/5, 2007) para 28; *Poland* (UN Doc No E/C.12/POL/CO/5, 2009) para 26; *Kazakhstan* (UN Doc No E/C.12/KAZ/CO/1, 2010) para 34; *Mauritius* (UN Doc No E/C.12/MUS/CO/4, 2010) para 27; *Russian Federation* (UN Doc No E/C.12/RUS/CO/5, 2011) para 29; Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt, *Mission to Sweden* (UN Doc No A/HRC/4/28/Add.2, 2007) paras 60-62; Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, *Mission to Poland* (UN Doc No A/HRC/14/20/Add.3, 2009) paras 57-80; and the Special Rapporteur's Annual Thematic Report to the UN General Assembly, (UN Doc No A/65/255, 2010), focusing on drug control; Committee on the Rights of the Child, *Concluding Observations: Ukraine*, (UN Doc No CRC/C/UKR/CO/4, 2011), paras 59 & 60.

26 2011, para 50g.

27 2011, para 106.

28 2011, para 584.

## 8. MILITARISED OPERATIONS AGAINST TRAFFICKERS

The Board appears supportive of military operations against drug traffickers. In the opening chapter it notes, perhaps with concern, though it is unclear, that *'When law enforcement agencies do mount operations to tackle criminal gangs within these areas, such operations may sometimes need to be carried out in a manner resembling a military operation'*<sup>29</sup>. However, it later expresses support for Brazil's *'high-profile raids using a combination of police and military personnel to arrest gang leaders and institute the rule of law'*.<sup>30</sup> The violence and death at the hands of police associated with such raids, and the impact on the 'marginalised communities' that form the root of the opening chapter, are well reported in the media, but not referred to as a risk in the INCB's report.<sup>31</sup>

The most prominent example in this regard is Mexico, and the Board notes that *'A number of successes have been achieved in the area of law enforcement, and the criminal organizations involved in drug and precursor trafficking have been weakened'*.<sup>32</sup> It goes on to acknowledge *'the strong commitment shown by the Government of Mexico through the decisive measures it has taken to address the country's drug related problems...'*<sup>33</sup> In addition, all attention is deflected from the Government of Mexico in relation to the massive death toll in the country, the INCB stating that *'Faced with the Government's resolve, drug trafficking organizations have resorted to unprecedented levels of violence'*.<sup>34</sup> No mention is made of the role of Mexico's militarised drug war in this violence or the fact that there has been negligible impact on the drug trade, or the reports of human rights abuses committed by the police and military.<sup>35</sup> These abuses have been raised as a concern by the UN Human Rights Committee<sup>36</sup> and the UN Committee on the Rights of the Child.<sup>37</sup> There has been a 900% increase in complaints to national human rights mechanisms.<sup>38</sup> The Board notes a death toll of over 35,000 up to 2010.<sup>39</sup> Estimates, however, are now reaching above 50,000.

## 9. AERIAL FUMIGATION OF ILLICIT CROPS

In relation to Colombia, the Board states that *'In 2010, 43,792 ha of illicitly cultivated coca bush were manually eradicated in the country (a decrease of 27 per cent), and an additional 101,939 ha were subject to aerial spraying'* and recommending, without commentary, that the government *'step up the measures to reduce the total area under illicit coca bush cultivation'*.<sup>40</sup> This is a clear vote of support for ongoing practices from the Board.

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29 2011, para 17.

30 2011, para 34.

31 See for example 'Rio de Janeiro gun battles leave at least 14 people dead' *The Guardian*, 25 November 2010.

32 2011, para 87.

33 2011, para 426.

34 Ibid.

35 See Human Rights Watch 'Neither rights nor security: Killings torture and disappearances in Mexico's war on drugs', November 2011.

36 Human Rights Committee, *Concluding Observations: Mexico* (UN Doc No CCPR/C/MEX/CO/5, 2010) para 11.

37 Committee on the Rights of the Child, *Concluding Observations: Mexico* (OPAC), (UN Doc No CRC/C/OPAC/MEX/CO/1, 4 February 2011), para 29.

38 'Activities Report 1999-2009', National Commission on Human Rights (CNDH).

39 2011, para 426.

40 2011, para 512.

Aerial fumigation in Colombia has had disastrous consequences with damage to health, food crops and the environment, and contributing to the massive internal human displacement in the country.<sup>41</sup> The UN Special Rapporteur on the Right to Health, the UN Special Rapporteur on the Rights of Indigenous People, the UN Working Group on the Use of Mercenaries, the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of the Child have all raised concerns about this practice.<sup>42</sup>

## 10. UNQUALIFIED COMMENTARIES AND SUPPORT FOR STATES DESPITE HUMAN RIGHTS RISKS

Throughout the report, unqualified comments are made about specific issues, and support expressed for certain policies despite clear human rights risks. This runs contrary to the Board's mention of the potential risks associated other policies, demonstrating a selective approach.<sup>43</sup> For example:

- » The INCB notes Iran's anti-trafficking measures/seizures made and dismantling of methamphetamine laboratories without mention of the fact that well over 1,000 have been executed for drugs offences in the last two years.<sup>44</sup> Myanmar is congratulated on its anti-trafficking measures, but these have also led to hundreds of people being extradited to China where they face the death penalty.<sup>45</sup> Similarly, the United Arab Emirates and Viet Nam are acknowledged for anti-trafficking measures without any commentary as to the death penalty for drugs in those countries. In the case of Viet Nam, the Board '*encourages the Government to strengthen its systems for enhancing the detection of drug trafficking*'.<sup>46</sup> UAE also prescribes judicial corporal punishment for drug use, which is absolutely prohibited in international law.<sup>47</sup>
  
- » On the related issue of diversion from licit sources, there is call to increase penalties without qualification as to proportionality (contrary to the Board's 2007 annual Report, which focused on this issue<sup>48</sup>), or evidence suggesting this would be an effective course of action. The Board '*encourages all Governments to examine whether the penalties foreseen in their national drug control legislation are sufficient to prevent such problems and to revise their laws, as necessary*'.<sup>49</sup> Clear human rights safeguards must be put in place here.

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41 For an overview see 'An exercise in futility: Nine years of fumigation in Colombia', Witness for Peace, Fundacion Minga and Institute for Policy Studies, 2007.

42 Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt, *Oral Remarks*, 21 September 2007, Bogota, Colombia; Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, *Mission to Colombia*, (UN Doc No E/CN.4/2005/88/Add.2, 2004) paras 46-52, & 106; Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, *Addendum: Mission to Ecuador*, (UN Doc No A/HRC/A/42/Add.2, 2007) paras 47-51; Committee on Economic Social and Cultural Rights, *Concluding Observations: Colombia*, (UN Doc No E/C.12/COL/CO/5, 2010), para 28; Committee on the Rights of the Child, *Concluding Observations, Colombia*, (UN Doc No CRC/C/COL/CO/3, 2006) para. 72.

43 See for example, para 39 on a bribery exposure website, where the Board notes that 'While such schemes can be effective in empowering communities, there is a risk that they may also be used by criminals to threaten and intimidate others'.

44 2011, paras 634, 680.

45 2011, para 89.

46 2011, para 118.

47 E. Iakobishvili 'Inflicting harm: Judicial corporal punishment for drug and alcohol offences in selected countries' Harm Reduction International, 2011.

48 International Narcotics Control Board, Annual Report for 2007, chapter 1.

49 2011, para 166.

- » On the same issue of diversion and law enforcement, the Board states that '*Drug abusers who seek treatment can direct the authorities to the sources of the substances in question, including pharmacies not adhering to prescription requirements, theft or unethical behaviour by patients, such as "doctor shopping"*'.<sup>50</sup> This is a highly problematic statement. The use of people in treatment as a source of information or to direct authorities to their peers should not be in any way encouraged. It runs the risk of multiple abuses and driving people away from treatment.<sup>51</sup>
- » There is further unqualified mention of the arrest and prosecution of doctors with '*unreasonably high prescription levels*';<sup>52</sup> but this demands clear safeguards, especially given the focus on availability of essential controlled medicines within the report.
- » The opening chapter also raises concerns. In its argumentation for why societies are breaking down the President of the Board decries changes in '*traditional values*' and the focus on the needs of the individual over the community.<sup>53</sup> Both of these are strong narratives against human rights protections, and often arise as justifications for the marginalisation and abuse of people who use drugs.<sup>54</sup>

As with so many other issues within the report, clear qualification was needed on these statements. The absence of such important qualifiers demonstrates either a lack of understanding of the context in which the INCB is working, or an unwillingness to call into question abusive or potentially abusive policies.

## 11. LACK OF ACADEMIC RIGOUR AND QUALITY

The Board's ill-informed legal reasoning and lack of understanding of broader international law has been dealt with above. In addition, the opening chapter displays little in the way of academic rigour or expert analysis falling some way short of the standards that should be expected at this level. It establishes an 'us and them' dynamic between so called 'disorganised' or 'marginal' communities and wider society, basing this on the 'threat' posed by marginalised people to wider society. According to the Board, '*marginal communities might exert a powerful radicalizing effect, threatening the very fabric of the wider society*'.<sup>55</sup>

While the intention of the opening chapter might be good, it is very poorly executed. There is not a single reference to a multitude of relevant studies or previous UN reports on the topics covered by the INCB

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<sup>50</sup> 2011, para 188.

<sup>51</sup> Human Rights Watch has documented the use of forced withdrawal to extract information from people who use drugs. See 'Rhetoric and risk: Human Rights Abuses Impeding Ukraine's Fight Against HIV/AIDS' March, 2006.

<sup>52</sup> 2011, para 193.

<sup>53</sup> 2011, paras 26 and 27.

<sup>54</sup> Indeed, this was the argument of the Russian Federation at the UN Human Rights Council in 2009, when the then Special Rapporteur on Torture called for the human rights based approach to drug policy.

<sup>55</sup> 2011, para 49.

On the same day that the INCB report was launched, in fact, Unicef released its 2012 'State of the World's Children' focusing on 'Children in an Urban World'.<sup>56</sup> It covers many of the issues dealt with so poorly by the INCB. Conspicuously, none of the work of UN HABITAT is referred to by the INCB (including the annual 'State of the World's Cities' report<sup>57</sup>), nor any of the key UN declarations in this area, including the Declaration on Cities and Other Human Settlements in the New Millennium, adopted by the General Assembly in 2001.<sup>58</sup> This raises important concerns, highlighting just how out of touch the INCB appears to be with these discussions.

Indeed, that the opening chapter of the INCB report was permitted to be released under the UN logo at all begs serious questions of quality control and competence.

## CONCLUSION

The INCB Annual Report for 2011 is replete with questionable legal reasoning and unqualified comments, as well as support for policies with identified negative human rights impacts. The language in many places is unbecoming a UN entity, and the lack of understanding of broader human rights norms, processes and agreements applicable to the Board's mandate is clear.

Article 9 of the 1961 Single Convention on Narcotic Drugs states that '*Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence*'. While the individual members of the Board are assisted by the secretariat in writing the report, they bear the responsibility for its content. The 2011 Annual Report shows that the Board is demonstrating a level of incompetence that must be addressed, in particular in relation to international law, and on some issues, a tendency to stray beyond the law and evidence and into personal polemic.

The INCB is failing to live up to the standards to which all members should be held under the terms of the 1961 Single Convention. It is time to ask whether the INCB, without basic reforms, can continue to '*command general confidence*'

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56 <http://www.unicef.org/sowc2012/fullreport.php>

57 <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2917>

58 UNGA Res S-25/2, UN Doc No A/RES/S-25/2, 16 August 2001.