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Recent UN Report on Arbitrary Detention and Drug Policies Underscores Urgent Need for Reform

by Isabella Oliver

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A recent United Nations human rights report shines a light on governments' widespread use of arbitrary detention in the context of drug enforcement.

The study, presented by the UN Working Group on Arbitrary Detention (WGAD) at the June-July 2021 session of UN Human Rights Council (HRC), documents high rates of arbitrary detention worldwide for those suspected of drug-related activity. This reliance on arbitrary detention is driving up incarceration rates across the globe, swelling populations in jails and prisons at a time when the ongoing COVID-19 pandemic is calling attention to the need to reduce prison overcrowding, as those held in confinement are [uniquely vulnerable to the virus](#).

The [Working Group's report](#) documents how, while states are required to uphold human rights obligations under international law—such as guaranteeing adequate legal protections, and due process for those who enter the criminal justice system—the reliance on harsh drug policies results in sustained violations of these standards.

The Working Group, a five-person body of independent experts [established](#) in 1991, is [tasked](#) with investigating cases in which individuals are arbitrarily arrested or detained: that is, deprived of liberty in a way that fails to meet international standards (for example, being arrested without a proper warrant, or placed in detention in a way that doesn't respect procedural rights). The group's mandate [was extended](#) in 2019 for an additional three-year period.

The Working Group's new report was prompted by a recommendation that the group itself has issued; it was [also requested](#) by the UN Human Rights Council. The group produced the report [in consultation](#) with UN member states, civil society stakeholders, international organizations, and UN agencies.

WOLA and a group of partners—including the [International Drug Policy Consortium](#), [Dejusticia](#), [EQUIS: Justicia para las mujeres](#), and the Autonomous University of Chiapas, Mexico—[submitted expert guidance](#) as the Working Group prepared its report. This submission emphasized the need for a gender-based approach, given [the disproportionate impact of punitive drug policies on women](#). The Working Group's final report incorporates these concerns, while also examining the impact of arbitrary detentions on other vulnerable groups, including LGBTI+ and Indigenous persons.

The Working Group found that **“people who use drugs are particularly at risk of arbitrary detention.”** In Latin America, many countries automatically place those accused of drug-related charges in pretrial detention—including Bolivia, Brazil, Ecuador, Honduras, Mexico, and Peru. Even in countries like Costa Rica and Guatemala where the law doesn't mandate pretrial detention for those accused of drug charges, there are similar practices that drive up

incarceration rates. Additionally, the report emphasizes the increase in torture of those detained arbitrarily, particularly in the context of militarized drug enforcement in countries such as [Mexico](#).

The Working Group report culminates with 17 recommendations, beginning with a call to UN member states to **“decriminalize the use, possession, acquisition or cultivation of drugs for personal use, including the possession of associated paraphernalia.”**

Further recommendations include ending the use of [drug courts](#), curbing the participation of the military in enforcement operations, and protecting the rights of Indigenous peoples to cultivate plants that they have traditionally grown for their religious, medicinal, and customary purposes.

International human rights standards prohibit arbitrary detention—but as highlighted by the Working Group’s report, states resort frequently to this illegal practice as part of their ongoing enforcement of harsh anti-drug policies. **States should heed the recommendations put forth by the Working Group as a toolbox for much needed reform.**

The new Working Group report follows [the release of a paper](#) earlier this year laying out the UN “common position” on incarceration. The paper advocated for reducing overreliance on incarceration and for reducing prison populations—neither of which can be achieved without addressing the use of arbitrary detention in the context of drug control. A previous “common position” paper, [released in July 2019](#), called for a “truly balanced, comprehensive, integrated, evidence-based, human rights-based” approach to the global drug policy framework.

This recent set of UN reports all mark a clear direction for governments to reform their drug laws and practices. **But there remains a serious gap between states’ practices, and the recommendations of the UN common positions and the Working Group on Arbitrary Detention.**

As the Working Group report highlights, the use of arbitrary detention to uphold punitive drug policies is another manifestation of the wide-ranging damage of the “war on drugs.” As long as there continues to be a strong disregard for the reality that arbitrary detention is a failed and unnecessary measure, the criminalization of those involved with the drug trade (whether out of an economic, cultural, or personal need) will continue to be a pipeline that fills prisons and destroys communities across the region.

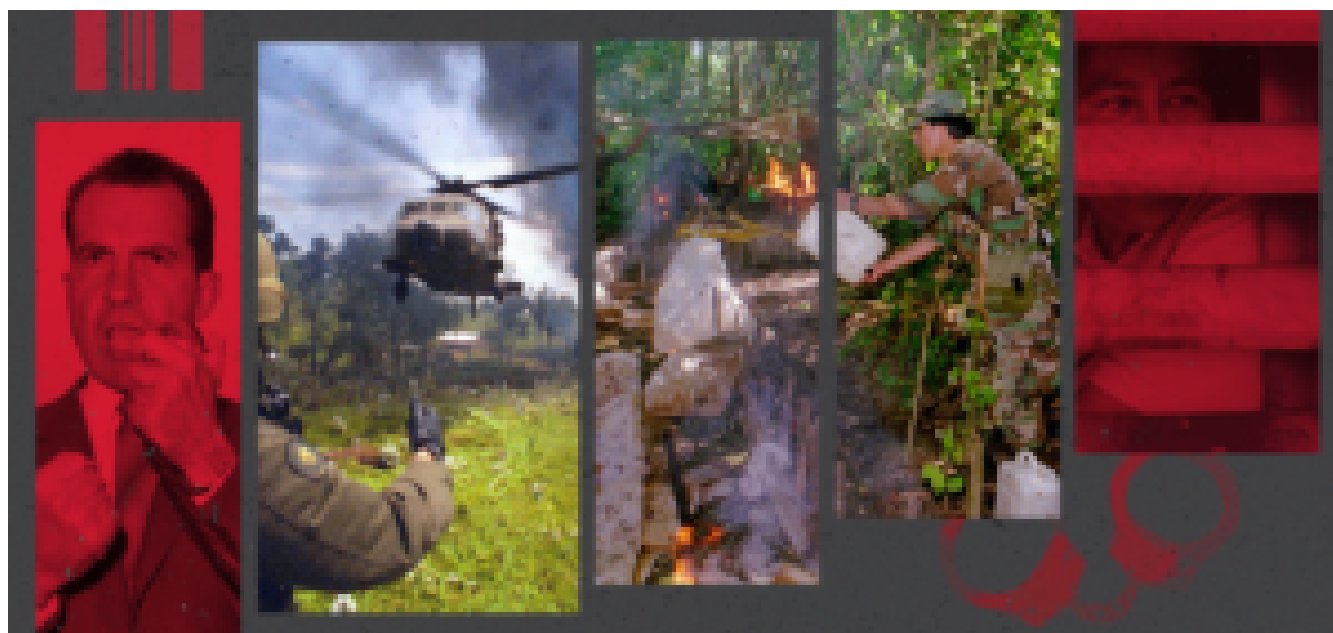
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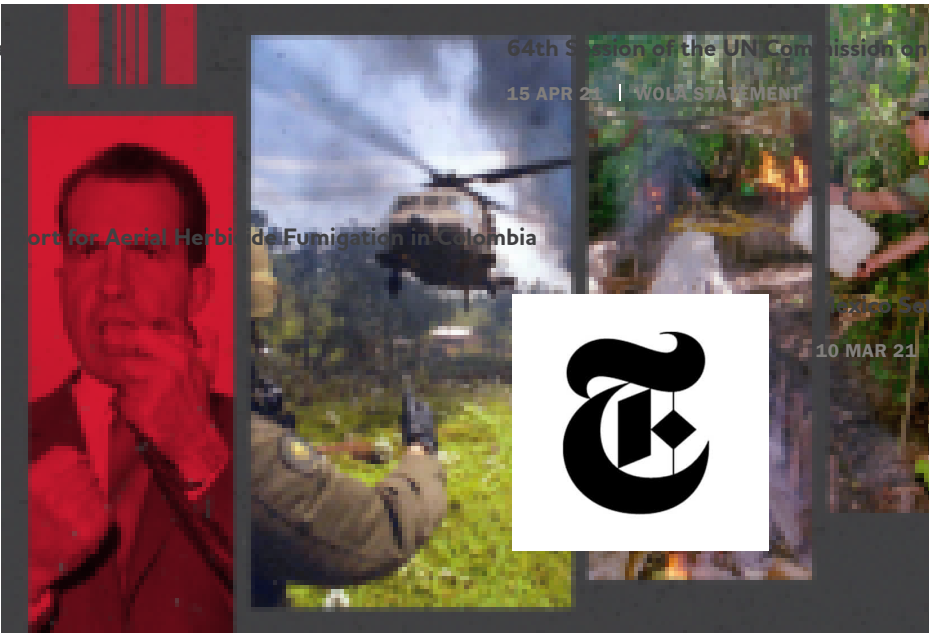
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