

## GUIDELINE ON ADVOCATING FOR THE HUMAN RIGHTS OF WOMEN WHO USE DRUGS

The purpose of this Guideline for human rights defenders in Estonia, Tajikistan and Armenia is to:

1. Provide basic information about the methodology for documenting human rights violations against women who use drugs in the format applicable for the United Nations (UN) human rights mechanisms; and
2. Provide practical guidance on how civil society can report human rights violations against women who use drugs to the UN, including the human rights treaty bodies and special procedures such as the Working Group on the issue of discrimination against women in law and in practice.

### I. Gender-based discrimination in the context of drug policy

Under Article 1 of the [International Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), “discrimination against women” is defined as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” For better understanding this definition can spread along the following key elements:

ELEMENTS TO REMEMBER	WORDING FROM CEDAW Article 1	COMMENTS					
Element 1 (Act)	any distinction, exclusion or restriction	<i>Act as a difference in treatment</i>					
Element 2 (Cause)	made on the basis of sex	<i>Cause for the difference in treatment</i>					
Element 3 (Effect)	which has the effect or purpose of <table style="display: inline-table; vertical-align: middle;"> <tr> <td style="text-align: center;">- impairing</td> <td rowspan="3" style="font-size: 3em; vertical-align: middle;">}</td> <td rowspan="3" style="vertical-align: middle;">the recognition, enjoyment or exercise by women</td> </tr> <tr> <td style="text-align: center;">or</td> </tr> <tr> <td style="text-align: center;">- nullifying</td> </tr> </table>	- impairing	}	the recognition, enjoyment or exercise by women	or	- nullifying	<i>Two types of effect by its intensity</i>
	- impairing	}			the recognition, enjoyment or exercise by women		
or							
- nullifying							
	of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field	<i>Influence on rights of women</i>					
Element 4 (Basis)	on a basis of equality of men and women	<i>The cornerstone of special protection of women from GBD</i>					

Discrimination against women (DAW) can also occur in various forms, including as a result of formally gender neutral laws, policies and practices which have a disproportionately negative effect on women in practice – also referred to as *de facto* discrimination.

The CEDAW requires States to achieve both formal and substantive (*de facto*) equality.

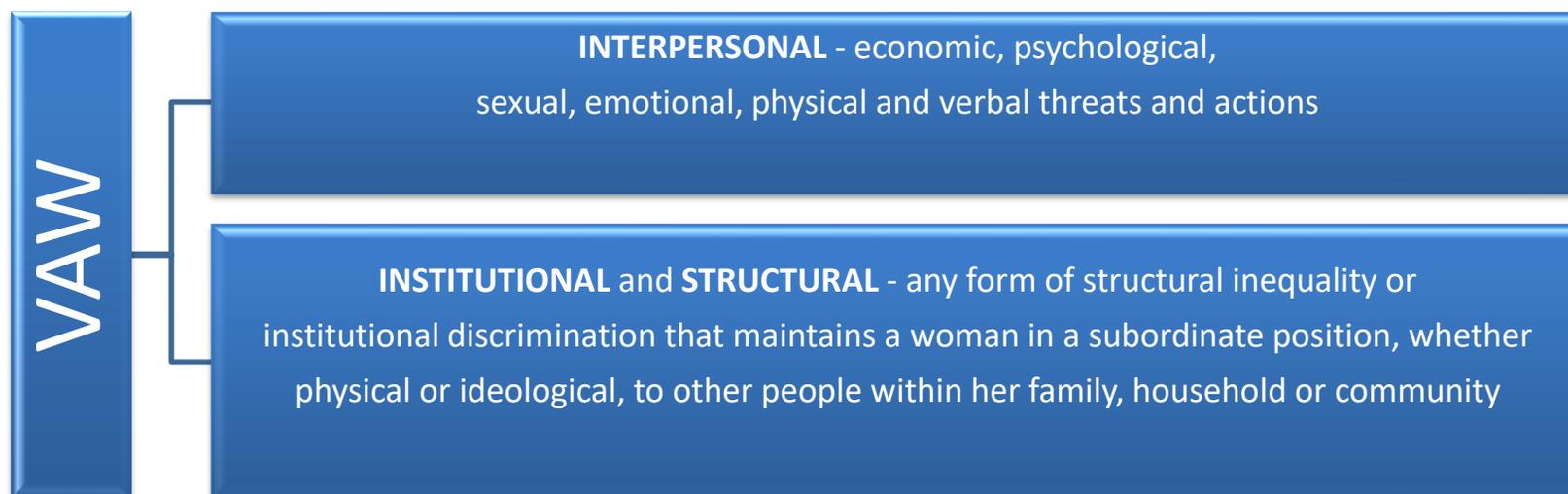
Article 12 of the CEDAW extends this requirement to the State’s obligation to eliminate discrimination against women in their access healthcare services throughout their life cycle and to “[respect, protect and fulfill women’s rights to health care](#)”.



Violence against women (VAW) is one form of DAW. Based on Article 1 of the Declaration on the Elimination of Violence Against Women (Declaration) VAW is “any act of gender-based violence that results in, or is likely to result in, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.<sup>1</sup> According to CEDAW Committee:

- States should act to protect women against any kind of VAW occurring within the family, at the work place or in any other area of social life.
- Exercise due diligence obligation to take positive action to prevent and protect women from violence, punish any person, organization or enterprise that perpetrate such violence and compensate victims of violence. To this end, the rights and freedoms that must be protected by the State include: right to life, right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, right to equal protection under the law, right to the highest standard attainable of physical and mental health

According to Report of the Special Rapporteur on violence against women, its causes and consequences, VAW can take two broad categories<sup>2</sup>



Following the framework established in the above mentioned report of the Special Rapporteur on VAW, in the context of drug policy, institutional and structural forms of violence can include criminal, administrative, health laws and policies that directly or indirectly establish disadvantage of women who use drugs in many spheres of social life, including private life, employment, access to health, child care, education, protection by the police, access to public services and benefits. Societal beliefs and stereotypes that claim that women who use drugs are less worthy than other women or other members of society can be a form of structural violence. Beliefs that perpetuate the notion that those who do not use drugs are superior to those who do, or that women who use drugs cannot have healthy children or cannot take proper care of children, or that all people who use drugs deserve death and punishment, are factors contributing to structural violence that can become institutionalized forms of multiple and intersecting discrimination.<sup>3</sup>

**Social drivers of DAW and VAW in the context of drug policy.**

- Gender-specific vulnerabilities related to health
- Stigma associated with drug use
- Social stereotypes, such as “women who use drugs are bad mothers”, “drug users cannot have healthy babies”

The interplay of stigma and discrimination serves to exacerbate for women many of the harms associated with drug use, including higher incidence and prevalence of blood-borne infections as a result of increased needle-sharing with male partners, added barriers to accessing health and harm reduction services due to fears of child care and custody ramifications, an elevated risk of domestic violence owing to a lack of trust of the police and healthcare providers, and a disproportionate share of encounters with the criminal justice system.

The State’s lack of gender-disaggregated data collection on the law and policy effects of drug use is an added dimension of discrimination previously singled out in a [general comment](#) by the CEDAW as an important aspect of State reporting to the treaty body.<sup>4</sup>

## II. Reporting human rights violations against women who use drugs to international bodies

If adequately framed, human rights violations against women who use drugs can fall under the mandates of several human rights bodies and mechanisms.

For instance, while reports against policies denying women access to drug dependence treatment can be framed as the denial of the [right to the highest attainable form of physical and mental health](#) under Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), they can also amount to [state-sponsored torture](#) by demonstrating that discriminatory practices entrap women in circumstances that violate their safety<sup>5</sup> and the State’s negligence in providing women the basic conditions and services that guarantee life has been recently [described](#) by the Special Rapporteur on extrajudicial, summary or arbitrary executions as one form of ‘arbitrary execution’.<sup>6</sup>

A properly substantiated report can therefore be a seminal document for civil society to submit to several international human rights bodies, including the European Court of Human Rights, the UN human rights treaty bodies, the HRC’s Universal Periodic Review and the UN “special procedures”.

Implementation of the [European Convention for the protection of human rights and fundamental freedoms](#) (European Convention) is achieved through proceedings at the European Court of Human Rights (ECHR). The Court rules on individual or State complaints of violations of the provisions of the European Convention and issues decisions that are binding on all member states. Over time, the jurisprudence emitted by the ECHR has integrated a right to health. The Court has previously addressed abuses against women who

use drugs, as in the case of [McGlinchey and Others v United Kingdom](#) (2003),<sup>7</sup> where the death of a woman who was refused drug dependence treatment in prison was found to violate the prohibition of torture, or inhuman or degrading treatment or punishment under Article 3 of the Convention. In the 2016 case of [Wenner v Germany](#),<sup>8</sup> a breach of Article 3 was also found when the drug substitution therapy denied for a prisoner with a clinically recognized heroin addiction. Article 3 has also been interpreted as protecting the reproductive health of women in the [R.R. v Poland](#) (2011).<sup>9</sup> There are limitations to pleading before the ECHR; All domestic remedies must be exhausted before acceding to the Court and only Estonia and Armenia, as a member of the Council of Europe, are subjects to the Convention.

At the UN level, the compliance of States parties to nine core international **human rights treaties and their optional protocols** are monitored by treaty bodies, or committees, of independent experts. Each treaty body conducts periodic reviews of State parties' implementation of the respective treaty and optional protocol terms. During this period of review, the State submits a report to the relevant committee explaining how it has adhered to treaty provisions. Human rights defenders can also intervene in the committee review by submitting "shadow reports" to the official report submitted by the State party on treaty non-compliance issues. Although labour-intensive, shadow reports allow civil society to present another side of the story to committees, and can be recycled for use in other advocacy efforts, such as media promotion or annual organizational reports, with minor edits needed. Once the committee issues its judgment, or "concluding observations" on the State's compliance, civil societies can subsequently adopt those recommendations in domestic advocacy work. NGOs with the ECOSOC consultative status can address issues from shadow reports and concluding observations in their submission to the [Commission on the Status of Women](#), a functional commission of the Economic and Social Council (ECOSOC) dedicated to the promotion of gender equality.

Beyond periodic review, most treaty bodies can receive and consider individual complaints of human rights violations perpetrated by the State if that State is party to the appropriate optional protocol or has made a declaration under a specific treaty provision. Several treaty bodies may also conduct confidential inquiries if they receive reliable information about serious, grave or systematic human rights violations by a State. In both instances, the State party is invited to take part in the proceedings. Decisions made by the treaty bodies are quasi-judicial and can demand redress for the victim. Drawbacks to treaty body complaints include that they can be time consuming, require the victim to have exhausted all domestic remedies, and require the State to have made the necessary declaration or ratification of legal instrument(s). Current information on the ratification status of human rights treaties and optional protocols by States can be found [here](#).

Civil society advocates can also access mechanisms beyond the human rights treaty system.

Unlike reporting to treaty bodies, a State need not have ratified or made declarations under a specific legal instrument as a prerequisite to civil society reporting under these mechanisms. For instance, all 193 UN member States are subject to the [Universal Periodic Review](#) (UPR). Every five years, the UPR Working Group assesses State implementation of international human rights engagements, including the Universal Declaration of Human Rights, the UN Charter, treaties and optional protocols to which the State is party, as well as voluntary pledges and commitments made by the State, including those presenting candidature for the HRC. Each UPR is carried out using information submitted by the State itself, research by independent human rights experts and treaty bodies at the UN, and written submissions from civil society which are summarized into a ten page “stakeholder summary” by the Office of the High Commissioner for Human Rights. The preparation of civil society submissions can be simplified by adapting them from shadow reports submitted to various treaty bodies. The final submission must be uploaded to an [online portal](#) approximately six to eight months prior to the UPR. Once the review is complete, an outcome report is issued with a list of recommendations which may be supported by the State at its discretion. Supported recommendations are expected to be implemented by the next review. The deadlines for stakeholder submissions for the upcoming UPR cycle in each country can be found [here](#). The [database](#) of country-specific UPR Recommendations and voluntary pledges can be used in subsequent lobbying and advocacy work. Comprehensive information on how to use the UPR mechanism in civil society advocacy is provided in a [compendium](#) prepared by the NGO [UPR Info](#).<sup>10</sup>

Various other **special procedures**, established through resolutions of the HRC, offer alternative avenues to reporting human rights violations. These special procedures consist of independent experts (either individual Special Rapporteurs or Working Groups) who are commissioned to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates), or on major phenomena of human rights violations worldwide (thematic mandates). Regardless of the human rights instrument ratified by a State, civil society advocates can submit individual cases of violations on the basis of credible and reliable information to the special procedures. It is not necessary to exhaust all domestic remedies prior to accessing the special procedures. As of March 2017, there are 13 country mandates and 43 thematic mandates, including the [Working Group on discrimination against women in law and in practice](#), the [Special Rapporteur on the right to the highest attainable standard of health](#), the [Special Rapporteur on torture, and other cruel, inhuman, or degrading treatment or punishment](#), the [Special Rapporteur on summary, arbitrary, or extrajudicial executions](#), and the [Special Rapporteur on violence against women](#). **Table 1** provides an overview of the international advocacy pathways, including reporting to treaty bodies and written submissions to the UPR Working Group and other special procedures, available to human rights defenders of women who use drugs in Estonia, Tajikistan and Armenia. Further information regarding the types of information and forms of submission required to advocate for women’s rights at the international level can be found in the OHCHR [Handbook for Civil Society](#).<sup>11</sup>

In the next section, we discuss in greater detail the potential to submit to the Working Group on discrimination against women in law and in practice, one of the special procedures of the HRC which can be particularly effective for the purposes of advancing the rights of women who use drugs.

**Table 1: Available international advocacy pathways for human rights defenders in Estonia, Tajikistan and Armenia**  
**Reporting Mechanism**

Country	Written Submission and/or Shadow Reports	Individual Complaints	Inquiry Procedure	Special Procedures
<b>Estonia</b>	<ul style="list-style-type: none"> <li>• Universal Periodic Review Working Group</li> <li>• Human Rights Committee</li> <li>• Committee on Economic, Social and Cultural Rights</li> <li>• Committee on the Elimination of Discrimination against Women</li> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• Committee on Rights of the Child</li> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Committee Against Torture</li> </ul>	<ul style="list-style-type: none"> <li>• Human Rights Committee</li> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• Committee on the Rights of Persons with Disabilities</li> </ul>	<ul style="list-style-type: none"> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Committee Against Torture</li> </ul>	<p>All 43 thematic mandates are available for Armenia, Estonia, and Tajikistan, including the <a href="#">Working Group on discrimination against women in law and in practice</a>, the <a href="#">Special Rapporteur on the right to the highest attainable standard of health</a>, the <a href="#">Special Rapporteur on torture, and other cruel, inhuman, or</a></p>
<b>Tajikistan</b>	<ul style="list-style-type: none"> <li>• Universal Periodic Review Working Group</li> <li>• Human Rights Committee</li> <li>• Committee on Economic, Social and Cultural Rights</li> <li>• Committee on the Elimination of Discrimination against Women</li> </ul>	Human Rights Committee	Committee Against Torture	

	<ul style="list-style-type: none"> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• Committee on Rights of the Child</li> <li>• Committee Against Torture</li> </ul>			<a href="#">degrading treatment or punishment</a> , the <a href="#">Special Rapporteur on summary, arbitrary, or extrajudicial executions</a> , and the <a href="#">Special Rapporteur on violence against women</a> .
<b>Armenia</b>	<ul style="list-style-type: none"> <li>• Universal Periodic Review Working Group</li> <li>• Human Rights Committee</li> <li>• Committee on Economic, Social and Cultural Rights</li> <li>• Committee on the Elimination of Discrimination against Women</li> <li>• Committee on the Elimination of Racial Discrimination</li> <li>• Committee on Rights of the Child</li> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Committee Against Torture</li> <li>• Committee on Enforced Disappearances</li> </ul>	<ul style="list-style-type: none"> <li>• Human Rights Committee</li> <li>• Committee on the Elimination of Discrimination Against Women</li> </ul>	<ul style="list-style-type: none"> <li>• Committee on the Elimination of Discrimination against Women</li> <li>• Committee on the Rights of Persons with Disabilities</li> <li>• Committee Against Torture</li> <li>• Committee on Enforced Disappearances</li> </ul>	

### III. Making submissions to the Working Group on the issue of discrimination against women in law and in practice

The five-member [Working Group on the issue of discrimination against women in law and in practice](#) (‘Working Group’) aims to identify, promote and exchange views in consultation with States, relevant UN entities, national human rights institutions, and civil society on good practices related to the elimination of laws that discriminate against or have a discriminatory impact on women. It is also empowered to take into account the views of civil society actors and cooperate with these stakeholders when carrying out its mandate and making law reform recommendations. These views may become integrated in a report produced by the Group each year, which focuses on good practices in the thematic priorities of political and public life, economic and social life, family and cultural life, and health and safety, and the mobilization of society as a whole, including men and boys, in the elimination of discrimination against women. The thematic priorities of the Working Group are compatible with civil society efforts to promote the rights of women who

use drugs. For instance, in their 2016 report the Working Group acknowledged that women members of marginalized groups are frequent victims of discrimination in terms access to treatment and medicines,<sup>12</sup> as in the case of women's lack of access to harm reduction services.

Beyond this broad thematic scope, the Working Group is among the most accessible mechanisms for civil society to advance issues faced by women who use drugs. Reasons include:

- As a special procedure of the HRC, submissions to the Working Group need not demonstrate that all domestic remedies have been exhausted with respect to a discriminatory issue
- The State need not have ratified a treaty or protocol to be subjected to it
- Both individual complaints and « situational » reports are accepted forms of submission
- The procedure for submitting to the Working Group is less formal than most UN reporting mechanisms, and may provide a less cumbersome means of engaging in dialogue with the State.
- The Working Group makes frequent [country visits](#) to examine how States are performing in terms of implementing laws and practices that respect women's human rights.

Submissions with regards to violations against an individual or groups of individuals must contain information regarding:

- The identity of alleged victim(s)
- The alleged perpetrator(s) of the violation
- Identification of the persons or organizations submitting the communication
- Where, what and how the discrimination took place

The Working Group also receives concise and politically neutral submissions from any person or group claiming to be the victim of a discriminatory law or practice, or any entity having reliable knowledge of the discriminatory laws and/or practices. In these cases, information should include, where applicable:

- Summary of the draft or enacted law, policy, or practice, along with a specific discriminatory provisions if possible
- Description of how the rule's implementation is impacting women's human rights
- Concrete examples of discrimination against women

All submissions should ultimately aim to make as many linkages as possible between the alleged rights violation and the mandate of the Working Group. Once the submission has been reviewed, the Working Group requests that the concerned Government comment

on allegations made or seek clarification on the steps being taken to rectify the alleged discrimination in accordance with international legal obligations. While awaiting action by the Working Group, human rights defenders can also re-use their reports to make submissions to relevant treaty bodies, and in this way maintain pressure on government to keep a certain issue on their radar.

Submissions should be emailed to **wgdiscriminationwomen@ohchr.org** or **urgent-action@ohchr.org**, where the subject line of the email refers to the mandate of the Working Group. Further information regarding submission and other formats for communication can be found [here](#).

#### **IV. Documenting abuses for the purpose of submission to UN human rights bodies and mechanisms**

The goal of documenting: get a snapshot that will allow the audience to discern the “who, where, when, what and how” (“5W1H”) of a particular form of abuse.

Proper documentation allows the abuse to come to public and international awareness, pressuring government to respond and potentially bringing justice to victims of abuse.

Before beginning a documentation project, however, it is important to set clear objectives by asking the following, in consultation with affected persons to the extent possible:

- What are the issues under investigation?
- For what reason are abuses being documented?
- What strategies can be used to investigate?
- What support and resources are needed?
- What are the risks or benefits of doing such an investigation?
- What methods can be used to draw attention to our findings?
- What do we wish to achieve as a result of the investigation?

It is not an easy task to demonstrate the State’s role in perpetuating a human rights abuse. It may sometimes be easier to demonstrate government omission to protect rights or promote their fulfillment, such as the failure to ensure an individual’s right to the highest attainable physical and mental health through access to drug dependence treatment for women who use drugs, than to point to the direct contravention of such a right.



Once objectives are clear and the specific human rights violation(s) identified, the phase of information collection can begin, with a view to addressing the 5W1H.

In addition to the 5W1H, further items of information may become necessary, such as:

- The nature of the violation
- Whether it is an isolated incident or part of a larger pattern
- Individuals affected by the violation
- State actions linked to the violation or having caused it
- Steps taken by other stakeholders, including other NGOs, institutions and governments, in relation this violation

Although the list of necessary information will grow and transform throughout the documentation process, a good fact-finding strategy should estimate the human, financial and material resources associated with the investigation. Each group's strategy will vary according to the unique goals, circumstances and conditions of the human rights issue in

question. However, to be given serious consideration by decision-makers, human rights defenders collecting data should be guided by the core principles of objectivity, accuracy and attention to detail.

Information regarding human rights abuses can generally be collected either through testimony or documentation. Direct testimonies from victims and perpetrators of abuse, as well as those who possess insider's knowledge of abuse, are crucial forms of evidence. When acquiring direct testimony, the interviewer should be well-prepared and should prepare the interviewee by providing context. Interviewees should be reassured of the confidentiality of the interview and that their identity will not be revealed without consent. They should also be informed of the limits of the interview and documentation process. Because interviewees may be sharing painful experiences, it is vital that the interviewer build trust through the use of reassuring and empathetic body language, listening skills and communication. In some cases, such as when documenting abuses by the criminal justice system against women who use drugs, it may be difficult to obtain direct and private testimony. Written questionnaires may be used to supplement the interview or if needed, replace the interview.

Direct testimony transcripts can be strengthened through the provision of primary documentation, such as police reports, medical files, judicial cases, and photos and videos of abuse. Circumstantial testimony, such as hearsay, and circumstantial documents, such as media reports, can also corroborate direct testimonies and documentation though they cannot replace them.

For a more detailed guide on how to document human rights abuse for the purposes of a specific advocacy project, please refer to the Open Society Institute's [Harm Reduction Field Guide for organizations of people who use drugs](#).<sup>13</sup>

## **V. Types of human rights violations to document**

The following non exhaustive list of human rights violations can provide examples of the type of cases to look for when documenting human rights violations.

- Termination of parental rights and child custody
- The lack of access to drug treatment, including OST, for pregnant women
- The lack of access to quality reproductive health
- Coercive abortion
- Violations of labor rights due to the fact of drug use or drug dependence
- Violation of the right to education due to drug use or drug dependence
- The lack of access to shelters and protection services in cases of domestic violence
- The lack of access to legal services
- The lack of access to HIV prevention, testing, treatment and care services
- Police violence
- Sentencing for drug offences with no due regards to gender-related issues
- Special vulnerability of women who use drugs to police prosecution

## **VI. Validity of evidence of gross and systematic violations of women's rights and GBD**

To produce a robust and effective report, human rights defenders should strive to make use of a variety of sources beyond direct testimony. These include:

- Statistics (disaggregated as may be necessary by gender, age, health status)
- Court case files
- Individual stories published online

- News clips, medial files
- Published research papers
- Gray literature
- National laws, bylaws and regulations

It may be difficult to access statistical data or official documents from government demonstrating discriminatory effects of laws and policies on women who use drugs. For these reasons, data should be sought from multiple sources, including other NGOs, international bodies and academic research centres.

## References

<sup>1</sup> UN General Assembly, Declaration on the Elimination of Violence Against Women, A/RES/48/104, December 20, 1993, Article 1.

<sup>2</sup> UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26, May 2, 2011, paras 24-31.

<sup>3</sup> *Ibid.*

<sup>4</sup> UN Committee on the Elimination of Discrimination Against Women, General recommendation No. 24: Article 12 of the Convention (women and health), A/54/38/Rev.1, chap. I, 1999, para 9.

<sup>5</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016, paras 8-12.

<sup>6</sup> UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, A/HRC/35/23, June 7, 2017, para 14.

<sup>7</sup> *McGlinchey and Others v United Kingdom*, (just satisfaction), no. 50390/99 (29 April 2003)

<sup>8</sup> *Wenner v Germany*, (just satisfaction), no. 62303/13 (1 September 2016).

<sup>9</sup> *R.R. v Poland*, (just satisfaction), no. 27617/04 (26 May 2011).

<sup>10</sup> UPR Info, *The Civil Society Compendium A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review* (Geneva: UPR Info, 2017). Available via [www.upr-info.org](http://www.upr-info.org).

<sup>11</sup> UN Office of the High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (New York & Geneva: United Nations Human Rights, 2008). Available via [www.ohchr.org](http://www.ohchr.org).

<sup>12</sup> UN Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, HRC 32nd Session, A/HRC/32/44, April 8, 2016, paras 50-52.

<sup>13</sup> K Kaplan, *Human Rights Documentation and Advocacy: A Guide for Organizations of People Who Use Drugs* (New York: Open Society Institute, 2009). Available via [www.opensocietyfoundations.org](http://www.opensocietyfoundations.org).