

Joint Submission to the Office of the UN High Commissioner for Human Rights pursuant to Human Rights Council resolution 52/24 entitled “Contribution of the Human Rights Council with regard to the human rights implications of drug policy”

May 2023

I. Introduction

The [HIV Legal Network](#) promotes the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, in Canada and internationally, through research and analysis, litigation and other advocacy, public education, and community mobilization.

The [Centre on Drug Policy Evaluation \(CDPE\)](#) works collaboratively with governments, affected communities, and civil society to improve community health and safety by conducting research and outreach on effective and evidence-based policy responses to substance use.

We are grateful for the opportunity to make this joint submission on human rights challenges in addressing and countering all aspects of the world drug problem and will focus on the Canadian context.

II. Criminalization and Canada’s Drug Poisoning Crisis

Canada’s approach to drugs has done catastrophic harm, fuelling deadly stigma, epidemics of preventable illness and death, and widespread, egregious violations of human rights. Criminalizing drugs has erected barriers to health care and exacerbated health-related harms, including a drug poisoning crisis that has resulted in 34,455 opioid toxicity deaths across Canada between January 2016 and September 2022.ⁱ Fentanyl and fentanyl analogues continue to be major drivers of overdose, with 81% of accidental apparent opioid toxicity deaths involving fentanyl between January and September 2022.ⁱⁱ Data from Toronto’s Drug Checking Service indicate new high-potency opioids are continuously being introduced into the unregulated opioid supply,ⁱⁱⁱ with a significant increase in multiple high-potency opioids presenting in a single sample in 2022.^{iv} Unexpected contents in the unregulated opioid supply have also been observed by drug checking services in British Columbia.^v

Driven by Canada’s long-standing policy of criminalizing drugs, the unregulated drug supply continues to become more potent and unpredictable year-over-year. The emergence of high-potency opioids in the drug supply can be understood by the “Iron Law of Prohibition,” which dictates that as law enforcement becomes more intense, the potency of prohibited substances increases.^{vi} In addition, the observed displacement/replacement effect^{vii} indicates that the scheduling of substances is routinely followed by the emergence of new substances often posing greater harms from consumption. By exacerbating the toxicity of the unregulated drug supply, Canada’s drug prohibition framework is responsible for causing a public health crisis of overdose fatalities and has also contributed to the disproportionate incarceration of Black and Indigenous people in Canada for drug offences — undermining the rights to health, life, freedom from cruel, inhuman or degrading treatment, freedom from arbitrary arrest and detention, liberty and security of person, as well as equality and non-discrimination.

III. Responding to Canada's Drug Poisoning Crisis

Against the background of a worsening drug poisoning crisis, Canada has supported a handful of time-limited programs to provide a **safer supply of pharmaceutical grade medications** that are of known quality and quantity to people who use drugs, with a focus on those who have not been successful with traditional treatments and are at high risk for overdose.^{viii} Emerging evidence indicates that safer supply programs reduce the use of drugs from the unregulated supply as well as the risk of death and overdose, increase engagement and retention in programs and care, improve physical and mental health, as well as social well-being and stability, and are a critical option on the continuum of care for people who use drugs.^{ix} Yet very limited capacity^x as well as barriers to entry^{xi} leave the vast majority of people who use drugs to rely on an unregulated supply, leading to a staggering loss of life due to overdose fatalities and failing to fulfill the rights to the highest attainable standard of health, life, and security of the person. Canada has yet to expand access to a regulated supply by engaging in the **legalization and regulation of controlled substances** as part of a public health approach to drug policy, despite recommendations in 2021 from Canada's own Expert Task Force on Substance Use to do so.^{xii}

Drug checking services, which provide people who use drugs with information on the chemical composition of their drug samples to facilitate more informed decision-making, have also emerged in recent years as an essential overdose prevention response in Canada. Research indicates that drug checking services influence the behaviour of people who use drugs, particularly when results are unexpected or drugs of concern.^{xiii} Monitoring of unregulated drug markets by drug checking services is also well established and can inform public health alerts, offering benefits to the broader community.^{xiv} Although drug checking services offer critical information where they are available in Canada, such services have been adopted as pilot programs in a small number of primarily urban settings^{xv} and are without long-term funding commitments needed to sustain operations,^{xvi} violating the rights of people who use drugs to health, life, and security of the person.

Another key measure to address Canada's drug poisoning crisis is **supervised consumption services (SCS)**, which are settings that provide a safe, hygienic environment where people can use drugs under the supervision of trained staff or volunteers to prevent the transmission of infections and overdose-related deaths. Evidence demonstrate that SCS: reduce the risk of accidental overdose because people are not rushing or using alone, connect people to social services, provide or connect people to healthcare and treatment, reduce public drug use and discarded drug equipment, prevent HIV and HCV transmission, reduce strain on emergency medical services, and provide space for people to connect with staff and peers.^{xvii} SCS can also provide a refuge from various forms of violence that women who use drugs may experience on the street.^{xviii} While a growing number of SCS are being implemented across the country,^{xix} gaps in coverage persist, driven in part by onerous requirements for every site to obtain a federal exemption to operate, hostile local governments, and limited access to funding.^{xx} As a result, community members have been forced to implement unsanctioned sites to save lives.^{xxi} Restrictions on inhalation services (which in some provinces is the route of consumption that has resulted in most overdose deaths)^{xxii} and on assisted injection (i.e., administered by SCS staff) imposed by the criminalization of trafficking also deter people from accessing the service. Inadequate access to SCS and restrictions on the critical services they can offer violate rights to health, life, security of the person, and liberty (given the risk of arrest and prosecution for unsanctioned sites or services).

Unsurprisingly, few if any prisons in Canada offer any of the above critical overdose prevention measures, despite dramatic recent increases of deaths in custody.^{xxiii} The vast majority also deny people in prison immediate access to **naloxone**, an exceedingly safe medication that can temporarily reverse an opioid overdose.^{xxiv} Most provinces across Canada offer free, unrestricted access to naloxone through first line responders, health centres, and pharmacies.^{xxv} Yet prisoners in Canada — a grossly disproportionate number of whom are Indigenous and Black — do not receive the same standard of care. In most prisons, naloxone is only accessible to prison health care or security staff and prisoners are not permitted to have naloxone kits inside their cells in the event their cellmates suffer an opioid overdose. Correctional health care staff will not always be immediately available in overdose situations, yet the time taken to respond to an opioid overdose can mean the difference between life and death. Training all prisoners on naloxone administration and ensuring all prisoners have direct access to naloxone kits (including nasal naloxone sprays) in their cells would save lives and better fulfill Canada's obligations to uphold the rights of people in prison to health, life, security of the person, as well as equality and non-discrimination.

In addition to the numerous harms of drug prohibition outlined above, criminalization pushes people to use their drugs in isolation, compromises their ability to take vital safety precautions, and deters people from essential health care and harm reduction services.^{xxvi} Black and Indigenous people in Canada are also disproportionately charged, prosecuted, and incarcerated for drug offences,^{xxvii} depriving them of their rights to equality and non-discrimination, freedom from arbitrary arrest and detention, security of the person, and health. Canada has taken some steps to mitigate the harms of criminalization, but in order to more meaningfully undo the harms of drug prohibition, it must **decriminalize drug possession for personal use and the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safer supply.**^{xxviii}

IV. Recommendations

In his report, we recommend the High Commissioner to call on Member States to:

- Expand access to safer supply, drug checking, and supervised consumption services, as well as naloxone, including in prisons, to curtail the harms of the unregulated drug market.
- Decriminalize the possession of all drugs for personal use and the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safer supply, and remove all sanctions for such activities.
- Commit to legalizing and regulating all controlled substances.

ⁱ Federal, provincial, and territorial Special Advisory Committee on the Epidemic of Opioid Overdoses, *Opioid- and Stimulant-related Harms in Canada*, Ottawa: Public Health Agency of Canada, March 2023. <https://health-infobase.canada.ca/substance-related-harms/opioids-stimulants/>

ⁱⁱ Ibid.

ⁱⁱⁱ E. de Villa, *Toronto Overdose Action Plan: Status Report 2022*. <https://www.toronto.ca/legdocs/mmis/2022/hl/bgrd/backgroundfile-226695.pdf>

^{iv} H. Thompson, K. McDonald, N. Maghsoudi, D. Werb. *Toronto's increasingly unpredictable and toxic unregulated opioid supply. Results from samples checked by Toronto's Drug Checking Service: January 1 - December 31, 2022*.

Toronto: Centre on Drug Policy Evaluation. April 30, 2023. <https://drugchecking.cdpe.org/report/january-1-december-31-2022/>

^v V. Long et al., *A Supplemental Report on British Columbia's Unregulated Drug Supply Amidst Dual Public Health Emergencies: Results from British Columbia's Community Drug Checking Service, January 2020 – October 2020*, BC Centre on Substance Use, 2020.

^{vi} J. Clayton and S. Atkins, *Drugs and Drug Policy: The Control of Consciousness Alteration*, 2007 at pp. 308–09.

^{vii} UNODC, *The growing complexity of the opioid crisis. Global SMART Update, Volume 24*, September 2020.

^{viii} Government of Canada, *Safer supply*. <https://www.canada.ca/en/health-canada/services/opioids/responding-canada-opioid-crisis/safer-supply.html>. See also Government of Canada, *Interactive map: Canada's response to the opioid overdose crisis*. <https://health.canada.ca/en/health-canada/services/drugs-medication/opioids/responding-canada-opioid-crisis/map.html>.

^{ix} National Safer Supply Community of Practice, *Prescribed Safer Supply Programs: Emerging Evidence*, 2023. Canada. <https://www.nss-aps.ca/evidence-brief>

^x Government of Canada, *Interactive map: Canada's response to the opioid overdose crisis*. <https://health.canada.ca/en/health-canada/services/drugs-medication/opioids/responding-canada-opioid-crisis/map.html>.

^{xi} Prescribed Safer Supply Programs: Emerging Evidence, supra.

^{xii} Health Canada Expert Task Force on Substance Use, *Recommendations on the federal government's drug policy as articulated in a draft Canadian Drugs and Substances Strategy (CDSS)*, June 11, 2021.

<https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-task-force-substance-use/reports/report-2-2021.html>.

^{xiii} N. Maghsoudi, J. Tanguay, K. Scarfone, I. Rammohan, C. Ziegler, D. Werb et al. "Drug checking services for people who use drugs: a systematic review," *Addiction*. 2022; 117: 532- 544. <https://doi.org/10.1111/add.15734>

^{xiv} Ibid.

^{xv} *Interactive map: Canada's response to the opioid overdose crisis*, supra..

^{xvi} Toronto's increasingly unpredictable and toxic unregulated opioid supply. Results from samples checked by Toronto's Drug Checking Service: January 1 - December 31, 2022, supra.

^{xvii} Government of Canada, *Supervised consumption explained: types of sites and services*, February 2023, <https://www.canada.ca/en/health-canada/services/substance-use/supervised-consumption-sites/explained.html>.

^{xviii} N. Fairbairn, "Seeking refuge from violence in street-based drug scenes: Women's experiences in North America's first supervised injection facility," *Social Science & Medicine* 67 (2008) 817–823.

^{xix} *Interactive map: Canada's response to the opioid overdose crisis*, supra.

^{xx} Canadian HIV/AIDS Legal Network, *Overdue for a Change: Scaling Up Supervised Consumption Services in Canada*, February 19, 2019. <https://www.hivlegalnetwork.ca/site/overdue-for-a-change-full-report/?lang=en>.

^{xxi} See, for example, S. Hyatt, "'No time for 'bureaucracy': Advocates plan to continue unsanctioned overdose prevention site in Cobourg," *Peterborough Examiner*, March 24, 2023:

<https://www.thepeterboroughexaminer.com/local-northumberland/news/2023/03/24/no-time-for-bureaucracy-advocates-plan-to-continue-unsanctioned-overdose-prevention-site-in-cobourg.html>; B. Labby, "3 weeks after province ends funding for injection site, unsanctioned space opens in Lethbridge," *CBC News*, Sep 26, 2020: <https://www.cbc.ca/news/canada/calgary/lethbridge-supervised-injection-site-unsanctioned-1.5737627>; and M.

Kupfer, "Unsanctioned 'overdose prevention site' to pop up in Ottawa, group says," *CBC News*, August 23, 2017.

^{xxii} D. Major, "Changing nature of Canada's overdose crisis calls for more aggressive response, experts say," *CBC News*, January 3, 2023. <https://www.cbc.ca/news/politics/changing-nature-canada-overdose-crisis-1.6694577>.

^{xxiii} Tracking (In)Justice, *Ontario Deaths in Custody on the Rise*, December 2022. <https://trackinginjustice.ca/wp-content/uploads/Ontario-Deaths-in-Custody-on-the-Rise-2022-8.pdf>. Correctional Service Canada, *Overdose Incidents in Federal Custody, 2018/2019*, December 2020. <https://www.csc-scc.gc.ca/research/sr-20-01-en.shtml>.

^{xxiv} Government of Canada, *Frequently Asked Questions: Access to naloxone in Canada (including NARCAN™ Nasal Spray)*, June 30, 2017, available at <https://www.canada.ca/en/health-canada/services/drugs-health-products/drug-products/announcements/narcan-nasal-spray-frequently-asked-questions.html>.

^{xxv} Canadian Pharmacists' Association, *Environmental Scan: Access to naloxone across Canada*, November 2017, available at https://www.pharmacists.ca/cpha-ca/assets/File/cpha-on-the-issues/Environmental%20Scan%20-%20Access%20to%20Naloxone%20Across%20Canada_Final.pdf.

^{xxvi} E. Wood et al., "The war on drugs: a devastating public-policy disaster," *The Lancet* 373:9668 (2009) pp. 989-990; J. Csete et al., "Public health and international drug policy." *The Lancet* 387:10026 (2016) pp. 1427-1480.

^{xxvii} See, for example, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995; J. Rankin and S. Contenta, "Toronto marijuana arrests reveal 'startling' racial divide," *Toronto Star*, July 6, 2017; R. Browne, "Black and Indigenous people are overrepresented in Canada's weed arrests," *Vice News*, April 18, 2018; A. Owusu-Bempah and A. Luscombe, "Race, cannabis and the Canadian war on drugs: An examination of cannabis arrest data by race in five cities," *International Journal of Drug Policy* (2020), 102937; K. Samuels-Wortley, "Youthful

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^{xxviii} Canadian Drug Policy Coalition, *Leading human rights and public health organizations release national drug decriminalization platform for Canada*, 2021. <https://drugpolicy.ca/leading-human-rights-and-public-health-organizations-release-national-drug-decriminalization-platform-for-canada/>