CESCR Drug Policy Annotated Outline Consultation
Submission by the HIV Legal Network

Introduction

The HIV Legal Network ("Legal Network") works in Canada and internationally to promote the human rights of people living with HIV or AIDS and other populations disproportionately affected by HIV, punitive laws and policies, and criminalization, through research and analysis, litigation and other advocacy, public education, and community mobilization. In the following submission, the Legal Network uses the example of Canada to illustrate how drug policy affects the human rights of people who use drugs, as guaranteed by the *International Covenant on Economic, Social and Cultural Rights*, with a specific focus on the right to health.

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States' obligation to respect, protect and fulfill the right to health of people who use drugs

Drug control interventions frequently interfere with, limit, or infringe multiple human rights and the situation in Canada is no exception. Canada faces an unprecedented drug poisoning crisis which has already claimed more than 40,000 lives since 2016.[i] **Canada's approach to drugs is entrenched in prohibition — including the criminalization of people who use and distribute drugs. This approach puts people who use drugs at increased risk of death and other harms, infringing their rights to health and to life.** Criminalizing people who use drugs 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.[ii] Research has shown frequent contact police have with people who use drugs contributes to their "health risk environment through pathways, such as syringe and naloxone confiscation, and physical and verbal harassment" which can lead to syringe sharing, rushed injection, and isolation while using drugs.[iii] Black, racialized, and migrant communities have described how excessive police surveillance and criminalization impacts their ability to access public services such as health care including harm reduction service.[iv]

The criminalization of drug possession or use also creates barriers to the implementation of health services for people who use drugs, including life-saving harm reduction programs. Supervised consumption services (SCS) (also commonly known as "drug consumption rooms"), are evidence-based health services that provide a safe, hygienic environment where people can use drugs under the supervision of trained staff or volunteers. SCS prevent accidental overdoses and overdose deaths, reduce the spread of blood-borne infections such as HIV and hepatitis C through harm reduction education and supplies, and contribute to improved health outcomes by linking clients to health and social services (including treatment and peer-based services). [v] As described in a recent report by the International Drug Policy Consortium, while a growing number of countries have given a green-light to the opening of SCS, their coverage remains extremely limited, particularly taking into consideration the historic record of overdose-related deaths.[vi] In Canada, where an average of 22 people die every day of overdose, SCS remain subject to an exceptional legal regime and burdensome application process that differentiate them from other health services and has limited their expansion.[vii] SCS cannot operate without a specific exemption from the government of Canada. Otherwise, service providers risk criminal prosecution under Canadian drug control legislation. More recently, provincial governments (which have jurisdiction over health services) hostile to harm reduction have imposed additional stringent reporting and standards requirements, extensive licensing criteria, and denied

funding to such services — forcing some to close and making their implementation in some localities in Canada extremely difficult.[viii] Conversely, forced institutionalization in the name of "drug treatment" is a growing concern in Canada, where at least two provincial governments are considering expanding involuntary treatment to include people who experience multiple overdoses[ix] in violation of their right to health and to be free from non-consensual treatment.[x] As described in the *International Guidelines on Human Rights and Drug Policy*, and in accordance with their obligation to uphold the right to health, States must "ensure that voluntary, informed consent is a precondition for any medical treatment or preventive or diagnostic intervention and that drug use or dependence alone are not grounds to deprive someone of the right to withhold consent."[xi]

Respecting and fulfilling the right to health of people who use drugs requires States to remove legal and policy barriers to voluntary life-saving health services and to take measures to reduce the harms associated with a stigmatizing and criminalizing environment that marginalizes people who use drugs and increases risks to their health.[xii] As the *International Guidelines on Human Rights and Drug Policy* recommend, States must repeal, amend, or discontinue laws, policies, and practices that inhibit access to "health goods, services, and facilities for the prevention of harmful drug use, harm reduction among those who use drugs, and drug dependence treatment" in order to fulfill the right to health.[xiii] More specifically, the UN Committee on Economic, Social and Cultural Rights,[xiv] the UN High Commissioner for Human Rights,[xv] the UN Special Rapporteur on the right to health,[xvi] as well as many other UN entities and human rights experts[xvii] recommend that **these measures necessarily include the decriminalization of the personal possession and use of drugs**.[xviii] **It is also recommended to remove all penalties associated with personal drug possession and to decriminalize "necessity trafficking" or the social supply or distribution of drugs.**[xix] As the experience in Canada has demonstrated, measures that stop short of fully repealing laws criminalizing or otherwise penalizing personal drug possession and necessity trafficking will be hampered by ongoing law enforcement discretion[xx] that may materialize in the interrogation and harassment of people who use drugs — experiences that are exacerbated by racism, classism, and gender discrimination.

Moreover, the Global Commission on Drug Policy has confirmed that "[t]he risks associated with different drugs and drug-using modes vary enormously, from negligible to severe. **Yet however risky a drug may be on its own, its risks inevitably increase, sometimes dramatically, when it is produced, sold and consumed in an unregulated criminal environment**."[xxi] Canada's long-standing policy of criminalizing drugs has resulted in an unregulated drug supply that continues to become more potent and unpredictable year-over-year. In response to the 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.[xxii] A growing body of 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.[xxiii] But safe supply programs in Canada — particularly those that are low-threshold and community-led — are plagued by legislative and regulatory hurdles rooted in prohibition that prevent their vital expansion.

Protecting the right to health of people who use drugs requires States to responsibly regulate drugs that are currently prohibited. Regulation and management of risky products and behaviours is a key function of government.[xxiv] Canada's own Expert Task Force on Substance Use recommended in 2021 that Canada "immediately develop and implement a single public health framework with specific regulations for all psychoactive substances, including currently illegal drugs as well as alcohol,

tobacco, and cannabis. This framework should aim to minimize the scale of the illegal market, bring stability and predictability to regulated markets for substances, and provide access to safer substances for those at risk of injury or death from toxic illegal substances."[xxv] Similarly, the UN High Commission on Human Rights as well as the Global Commission on Drug Policy have acknowledged that protecting the life and health of people who use drugs requires moving drug control from unregulated criminal markets to appropriate governmental agencies.[xxvi] Civil society and communities must be meaningfully involved in the process of regulation.[xxvii]

Paying particular attention to racialized communities, women, gender-diverse people, and people in prisons

Canada's approach to drug policy has a discriminatory impact on the right to liberty of Black and Indigenous people in Canada and on the right to health of people in prisons. Drug prohibition in Canada has resulted in a significant proportion of people, and particularly Black men, serving prison sentences for drug offences.[xxviii] Indigenous and Black women are also more likely than white women to be incarcerated for drug offences.[xxix] In 2017, Canada's prison ombudsperson noted 54% of Black women in federal prisons were serving sentences for drug offences, many of whom were carrying drugs across borders as a way to alleviate situations of poverty.[xxx]

Worldwide, the criminalization of drug use and possession has resulted in the mass incarceration of people who use drugs, escalating risks of HIV, hepatitis C and other adverse health outcomes while in prison and after release.[xxxi] **In Canada, 80% of federal prisoners in Canada report a substance use issue[xxxii] and researchers have documented recent increases of overdose deaths in custody**.[xxxiii] **Not surprisingly, research indicates the incarceration of people who inject drugs is a factor driving Canada's HIV and hepatitis C epidemic.**[xxxiv] Harm reduction policies and programs exist across federal, provincial, and territorial prisons in Canada, but vary widely in practice meaning people in prisons do not have equivalent or adequate access to harm reduction services such as needle and syringe distribution[xxxv] or opioid agonist therapy, or to overdose prevention measures such as naloxone or safe supply programs. Significant gaps in access to harm reduction and health services in prison are especially harmful to Indigenous people — and Indigenous women in particular — who are grossly overrepresented in Canada's prisons and face significantly higher rates of new HIV and hepatitis C.[xxxvi] Despite this, and calls from Canada's correctional ombudsperson to provide trauma-informed programming and interventions for Indigenous women in federal prisons, there are no culturally appropriate, gender-specific drug treatment services for Indigenous women in Canada's prisons.[xxxvii]

Both in prison and the community as a whole, insufficient attention is paid to the needs of women and gender-diverse people who use drugs and their access to health services, including harm reduction services internationally[xxxviii] and in Canada. Consequently, they face additional barriers to harm reduction and other health services and are at increased risk of HIV and hepatitis C, as well as other injection-related harms, overdose, and death.[xxxix] According to the *International Guidelines on Human Rights and Drug Policy*, women who use drugs have the right to access health care on a non-discriminatory basis, including "good-quality gender-sensitive prevention, treatment, harm reduction, and other health care services for women who use drugs, including opioid substitution treatment for pregnant women, tailored to meet women's specific needs."[xl] Creating a safe and welcoming environment for women and gender-diverse people may entail setting women-only operating times or services, developing clear policies prohibiting inappropriate conduct (e.g. sexual harassment and sexist, homophobic, or transphobic comments), providing sexual and reproductive services, and training staff on gender-based violence.[xli]

Addressing the needs of women and gender-diverse people who use drugs also require removing legal, policy, and funding barriers to harm reduction, health, and social services that prevent access to services, including shelters for women experiencing violence and/or homelessness. Drug use and gender-based violence are deeply interconnected. Globally, women who use drugs experience rates of violence up to 24 times higher than women in general.[xlii] As described by the Eurasian Harm Reduction Association, "the stress and trauma of violence perpetuate the women's drug use, and the actions and behaviours associated with drug use expose them to heightened risk of violence."[xliii] Yet, many violence against women (VAW) shelters in Canada maintain abstinence-based policies of denying access to shelter for women and gender-diverse people who use drugs. Even where women and gender-diverse people who use drugs are not denied access, insufficient harm reduction services are available, or shelter staff lack the training necessary to serve those who use drugs.[xliv] It is thus imperative that services that provide support to women and gender-diverse people who experience violence account for the specific needs of those who use drugs.[xlv]

Among women and gender-diverse people who use drugs who are pregnant and/or have children, child protection laws and the ways in which they have been interpreted and enforced by social service and health care providers in Canada have also been identified as a source of major concern and fear, with negative impacts on parents' well-being as well as their access to health care. Numerous studies have shown that the very real threat of child welfare involvement and having their children removed from their care is one of the greatest barriers for pregnant people and parents when considering accessing harm reduction services, drug dependence treatment, and pre- and post-natal care.[xlvi] The resulting lack of prenatal care and other services for pregnant people who use drugs means they are more likely to miscarry or give birth prematurely and have infants with low birth weights, less likely to access harm reduction services and use sterile drug equipment, less likely to access voluntary drug dependence treatment programs and interventions to prevent vertical transmission of HIV, as well as more likely to have their children removed from their care.[xlvii] As the *International Guidelines on Human Rights and Drug Policy* recommend, States should ensure that a "woman's drug use or dependency is never the sole justification for removing a child from her care or preventing reunification with her child, as this may deter access to necessary drug-related health care services and prejudice the woman's right to family life and the child's right to remain in the care and custody of their parents."[xlviii]

Meaningful involvement of people who use drugs in drug policies and services for people who use drugs

The UN High Commissioner for Human Rights has recommended the meaningful engagement of civil society in national and international decision-making processes to develop effective human rights-based drug policies.[xlix] Evidence on the effectiveness of peer-led responses in services for people living with HIV and people who use drugs also support community-led organizing in the delivery of harm reduction services.[l] In Canada, harm reduction providers have been at the front line of the drug poisoning crisis. Continuous exposure to overdose-related deaths, coupled with under-resourced services and lack of government support have resulted in concerning levels of burnout and traumatic stress among harm reduction workers.[li]

Respecting, protecting, and fulfilling the rights to health of people who use drugs requires States to place communities, including people who use drugs in their diversity, at the center of the response[lii] and to provide adequate support to community-led organizations providing support to people who use drugs. Barriers that unreasonably restrict or prevent the participation of people who use drugs and communities in the design, implementation, and assessment of drugs laws, policies, and practices should be removed. Instead, States should adopt and implement legislative and other

measures to facilitate the participation of people who use drugs in the design, implementation, and assessment of drug laws, policies, and practices.[liii]

Recommendations

Consolidating its stated position and building on the *International Guidelines on Human Rights and Drug Policy* as well as the 2023 report of the Office of the United Nations High Commissioner for Human Rights, the Committee should provide concrete guidance to States regarding the following recommendations that affect the right to health of people who use drugs:

- Decriminalize activities related to personal drug use and necessity trafficking and remove administrative and other penalties for these activities.

- Remove custodial sentences for drug offences and ensure that conditions in detention respect the United Nations Standard Minimum Rules for the Treatment of Prisoners, including with respect to equivalence in health care and harm reduction, access to treatment, and effective oversight.

- Take measures to address discriminatory drug law enforcement practices and sentencing policies against Black, Indigenous, and other racialized people.

- Take control of illegal drug markets through responsible regulation and the development of a regulatory system for legal access to all controlled substances.

- Adopt drug policies that uphold the human rights of people who use drugs, including by explicitly prohibiting discrimination against people who use drugs and by ensuring access to health care, voluntary and evidence-based treatment and harm reduction services such as needle and syringe programs and supervised consumption services for people who use drugs in their diversity.

- Ensure that drug dependence treatment is evidence-based and voluntary, and informed consent is a precondition for any medical treatment or intervention.

- Adopt gender-sensitive drug policies that respond to the specific needs of women and gender-diverse people, and repeal laws and policies that deprive women and gender-diverse people of access to shelter or housing or that justify the removal of children from their parent's custody or otherwise punish women for using drugs.

- Meaningfully engage civil society organizations, people who use drugs, affected communities, and youth in the design, implementation, and evaluation of drug policies and services for people who use drugs.

- Incorporate and fund harm reduction services, and support community-led advocacy and harm reduction services.

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[xvi] A. Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, supra.
[xvii] J. E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013; OHCHR, *Human rights challenges in addressing and countering all aspects of the world drug problem*, supra; UNAIDS, UNHCR, UNICEF, WFP, UNDP, UNFPA, et al. *Joint United Nations statement on ending discrimination in health care settings*, 2017, Global Commission on HIV and the Law, *Risks, rights & health*, UNDP, 2012 and supplement 2018.
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