

April 15, 2024

To the Secretariat of the UN Working Group on Arbitrary Detention (WGAD):

Re: The WGAD's upcoming visit to Canada 13 – 24 May 2024

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. We do this through research and analysis, litigation and other advocacy, public education, and community mobilization. The Canadian Drug Policy Coalition is a non-partisan, evidence-based policy advocacy organization comprised of more than 50 organizations and over 7,000 individuals striving to end the harms of drug prohibition. For decades, our organizations have worked to advance drug policies that uphold human rights.

We wish to draw the WGAD's attention to **increasing calls in Canada for involuntary care and detention of people who use drugs:**

- In British Columbia, numerous lawmakers have called for [mandatory treatment](#) for both youth and adults who have experienced repeated overdoses, despite strong evidence showing the known harms of involuntary care.ⁱ
- In Alberta, [a proposed *Compassionate Intervention Act*](#) would give police and family the ability to force adults and youth into involuntary drug treatment, paired with ongoing calls for involuntary treatment of homeless people who use drugs.ⁱⁱ
- In Nova Scotia, a proposed [Protection of Children from Abusing Drugs Act](#) would ostensibly grant parents and guardians the power to obtain a court order to forcibly remove youth who “abuse” drugs (including alcohol or cannabis) from the community and to involuntarily detain them in a “safe house” facility to undergo detoxification for up to 10 days.
- In New Brunswick, a proposed [Compassionate Intervention Act](#) would “empower judges and hearing officers to order treatment for Severe Substance Abuse Disorder.”ⁱⁱⁱ

Involuntary treatment includes interventions such as forced medication, institutionalization, physical restraints, isolation/solitary confinement, and other coerced behaviour, subjecting people who use drugs to deprivations of liberty and autonomy while risking their security and health. Despite the clear human rights concerns they raise, **there is no evidence that involuntary treatment is effective to treat what is construed as “problematic substance use.”** A 2023 Canadian review of studies on the outcomes of forced treatment concluded that it has “limited benefit” — with voluntary treatment consistently outperforming involuntary treatment in terms of cost, sustained gains (such as abstaining from substance use), and risk of drug poisoning death following

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treatment.^{iv} Calls for the expansion of forced treatment are also occurring against a backdrop in which access to voluntary care remains highly inaccessible, particularly for the most marginalized people who use drugs, and options for drug treatment are unregulated, driving unpredictability in quality and safety of the services. Notably, the 2023 review also found that “involuntarily treated patients with [substance use disorder] are at a higher risk of overdose after treatment.”^v This is because individuals who resume relying on Canada’s highly toxic, criminalized drug supply lose their tolerance after involuntary treatment and are more likely to overdose.

Forced interventions also erode trust in the health care system. With the looming threat of involuntary treatment, frontline workers are forced to make the difficult decision of calling emergency services when an overdose occurs and potentially forcing someone into involuntary care. These interventions destroy trust and relationships and deter people from seeking medical assistance, even for issues unrelated to their substance use, for fear of forced treatment. Legislation authorizing forced treatment also has the potential to irreparably harm family relationships by giving guardians and families the false impression that such treatment is an effective way of supporting their loved ones, despite the documented risks.

Moreover, involuntary treatment increases stigma by perpetuating the notion that people who use drugs deserve to be forcibly removed from community and subject to medical care to which they did not consent and is likely to result in profound psychological and physical harm, including increasing their risk of death. As the WGAD has previously confirmed, “Drug treatment should always be voluntary, based on informed consent”; as such, the Working Group called on States to “Amend legislation, policy and practice so that all treatment for drug use disorders, including for drug dependency, is evidenced-based, strictly voluntary and based on informed consent.”^{vi}

Additionally, **support for Drug Treatment Courts continues to grow, despite the numerous human rights concerns associated with these courts**, as we previously detailed in the [HIV Legal Network’s 2020 submission to the WGAD](#).^{vii} As we noted then, DTCs are championed as a potential alternative to incarceration for adults charged under the *Controlled Drugs and Substances Act* or the *Criminal Code* in cases where their drug dependence was a factor, but are broadly coercive in nature. To qualify, an individual is first screened by a prosecutor and must enter a guilty plea to be admitted into the program. For the duration of the program, a participant is subject to frequent, random urine screening and is compelled to submit to a rigorous treatment regime and to appear personally in court on a regular basis for highly intrusive judicial supervision. A judge can impose sanctions including jail time for drug use, breach of curfew, or missed treatment sessions, urine tests or court appearances. To graduate from the program, participants must meet criteria, including being abstinent for a certain period. Those who are expelled from or do not complete the program face the traditional criminal sentencing process. Troublingly, the most powerful tool DTCs have to coerce people into ending substance use and completing treatment is the threat of incarceration.^{viii}

Studies by Canada’s federal Department of Justice have also shown that DTCs are unable to engage women, Indigenous people, sex workers, racialized people, and youth — or to retain them once they have entered the program, thus exposing them to the serious penalties associated with attrition.^{ix} Evaluations of DTCs have shown that, compared to men, women participants experience greater degrees of poverty and mental illness and are more likely to have children and family responsibilities, which impede their ability to complete the program; in particular, lack of appropriate housing is a major factor in women’s attrition.^x As the WGAD noted in 2021, “there is

considerable evidence that drug courts cause significant harm to participants and frequently violate human rights” and that “Courts should not be supervising or involved in any way with drug treatment decisions, which should be left exclusively to health professionals.”^{xi}

Punitive approaches to drug use of any form are drivers of stigma, isolation, and preventable harms and death. A core principle of harm reduction is that options for care must be non-judgmental, evidence-based, and non-coercive. Human rights norms also underscore the importance of bodily autonomy and informed consent to medical treatment as a corollary of the right to health, as well as the need to consider the impact of potential human rights violations on historically marginalized people. People who use drugs, and particularly those who are racialized, visibly homeless, living in poverty, young, disabled, and of marginalized genders are likely to be subject to even greater surveillance because of forced treatment initiatives, which could lead to increased harassment, marginalization, exclusion or expulsion from voluntary health and social services, and other abuses.

Expansion of involuntary treatment both exacerbates existing harms and fails to address underlying systemic issues. **These approaches are out of step with international human rights norms, and harms – rather than supports – people who use drugs.** As UN human rights bodies have acknowledged, “All health care interventions, including drug dependence treatment, should be carried out on a *voluntary basis with informed consent.*”^{xii}

To that end, we urge the WGAD during its visit to Canada to:

1. Meet with people who use drugs and with human rights organizations such as ours working on drug policy to further discuss the tremendous harms associated with forced treatment and other punitive approaches to substance use;
2. Meet with provincial and federal politicians and policymakers to affirm the right of people who use drugs to bodily autonomy and informed consent to treatment and to express your concern with and denounce involuntary treatment initiatives, as well as to urge those politicians and policymakers to advocate for law and policy reforms that aim to prevent, rather than respond to, the crises that lead to involuntary detention, including robust investments in voluntary treatment options that have strict regulatory oversight, harm reduction programming, and safe supply programs that are culturally affirming and reflect the intersecting identities of people who use drugs;
3. Issue a public statement directed to provincial and territorial and federal authorities at the conclusion of your visit denouncing all forms of coercive and involuntary care, whether it be pursuant to mental health legislation, forced substance use treatment legislation, or under the auspices of Drug Treatment Courts;
4. As per your 2021 Study, call on Canada to “Decriminalize the use, possession, acquisition or cultivation of drugs for personal use” and to “Promptly release persons detained only for drug use or possession for personal use and review their convictions with a view to expunging their records,” so people are not deprived of their liberty and other human rights on the basis of their drug use.

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- ⁱ See Pivot Legal Society, *Involuntary Treatment: Criminalization by another name*, March 23, 2023: https://www.pivotlegal.org/involuntary_treatment_criminalization_by_another_name; J. Hunter, “Behind the push to expand mandatory treatment for mental health and addictions in B.C.,” *The Globe and Mail*, February 1, 2023: <https://www.theglobeandmail.com/canada/british-columbia/article-behind-the-push-to-expand-mandatory-treatment-for-mental-health-and/>; and BCCDC, Detention-based services for people who use drugs, 2021: <http://www.bccdc.ca/Health-Professionals-Site/Documents/Detention-based%20Services%202021.pdf>
- ⁱⁱ See “Alberta weighing involuntary treatment law for people with addiction,” *CBC News*, April 19, 2023: <https://www.cbc.ca/news/canada/edmonton/alberta-weighing-involuntary-treatment-law-for-people-with-addiction-1.6816153>
- ⁱⁱⁱ New Brunswick Legislative Assembly, *Speech from the throne, Third Session of the 60th Legislative Assembly of New Brunswick*, October 17, 2023 at p. 12: <https://www2.gnb.ca/content/dam/gnb/Corporate/pdf/ThroneSpeech/2023/speech-from-the-throne-2023.pdf>. See also J. Poitras, “Bill on forced addiction treatment will include evaluation process, minister says,” *CBC News*, March 27, 2024: <https://www.cbc.ca/news/canada/new-brunswick/bill-forced-addiction-treatment-new-brunswick-1.7157350>
- ^{iv} E. Cooley, A. Bahji and D. Crockford, “Involuntary Treatment for Adult Nonoffenders with Substance Use Disorders?” *The Canadian Journal of Addiction* 14: 2, June 2023.
- ^v Ibid.
- ^{vi} UN Working Group on Arbitrary Detention, *Arbitrary detention relating to drug policies*, A/HRC/47/40, 18 May 2021.
- ^{vii} Canadian HIV/AIDS Legal Network, *Submission to the United Nations Working Group on Arbitrary Detention in relation to its study on arbitrary detention relating to drug policies*, June 2020: <https://www.hivlegalnetwork.ca/site/submission-to-the-united-nations-working-group-on-arbitrary-detention-in-relation-to-its-study-on-arbitrary-detention-relating-to-drug-policies/?lang=en>.
- ^{viii} Canadian HIV/AIDS Legal Network, *Impaired Judgment: Assessing the Appropriateness of Drug Treatment Courts as a Response to Drug Use in Canada*, 2011.
- ^{ix} Department of Justice Canada, *Drug Treatment Court Funding Program Summative Evaluation Final Report*, Evaluation Division Office of Strategic Planning and Performance Management, March 2009.
- ^x Ibid.
- ^{xi} UN Working Group on Arbitrary Detention, *Arbitrary detention relating to drug policies*, supra.
- ^{xii} See R. Lines, J. Hannah and G. Girelli, “‘Treatment in Liberty’ Human Rights and Compulsory Detention for Drug Use,” *Human Rights Law Review* 22:1, March 2022: <https://academic.oup.com/hrlr/article/22/1/ngab022/6369597> and ILO; OHCHR; UNDP; UNESCO; United Nations Population Fund; UNHCR; UNICEF; UNODC; UN Women; WFP; WHO; and UNAIDS, “Joint Statement: Compulsory drug detention and rehabilitation centres,” March 2012: <https://digitallibrary.un.org/record/3950265?ln=en>.