

Drug Policy and Human Rights Implications in Canada

Submission to the United Nations High Commissioner for Human Rights
regarding the Human Rights Council resolution 52/24 - “Contribution of the Human Rights
Council with regard to the human rights implications of drug policy” (adopted April 04, 2023)

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Introduction

CDPC is a drug policy capacity building and network development organization working with over 50 organizations and 7,000 individuals to support the development of Canadian drug policy based in science, guided by public health principles, and respectful of human rights for all, that seeks to include people who use drugs and those harmed by the war on drugs in moving towards a healthier Canadian society.

Many of Canada’s numerous human rights and drug policy issues are captured in the **HIV Legal Network**ⁱⁱ and **Centre on Drug Policy Evaluation**ⁱⁱⁱ submissions. CDPC fully supports their recommendations. CDPC’s submission draws attention to two other pressing issues currently surfacing in Canada – 1. **Politicized resistance to harm reduction services and decriminalization policies;** 2. **Involuntary, compulsory, or coercive treatment.**

Harm reduction

We are pleased to see that the Human Rights Council Resolution 52/24 includes an explicit and supportive reference to “harm reduction”.

In Canada, between 2006 - 2015, the federal government of the day removed the term “harm reduction” from government documents and impeded the implementation of harm reduction measures including, in 2008, canceling the operating exemption from the Controlled Drugs and Substances Act^{iv} for Canada's first sanctioned supervised consumption site (SCS). In litigation that followed, the Supreme Court of Canada (Canada's highest court), unanimously found in 2011, that the Minister of Health’s refusal to exempt the SCS violated the constitutionally protected right to life, liberty and security of the person, and ordered the Minister to grant the SCS an exemption.^v Since 2016, a new federal government has re-integrated harm reduction

into federal policy (e.g. more SCS,^{vi} naloxone distribution,^{vii} limited safer supply projects^{viii}) but has nonetheless continued to support prohibitionist policies which are primary drivers of stigma, toxic drug harms, and criminalization.

The tragic result of prohibition is that Canada now has perhaps the world's most toxic illegal drug supply.^{ix} The speed and scale of harm reduction implementation has been outpaced by rapid and volatile changes to the illegal drug supply,^{x; xi; xii} possibly fuelled in part by the scheduling of drugs and precursors^{xiii} and national and international interdiction efforts. There were 34,455 opioid toxicity related deaths in Canada between January 2016 (2,830) and September 2022 (Jan-Sep: 5,360)^{xiv} – currently 20 deaths per day.

Despite the significant positive results of harm reduction interventions there is growing opposition, particularly about safe supply initiatives.^{xv} Harm reduction programs have become targets for political debate, misinformation, and dangerous rhetoric and ideas, including partisan attempts to undermine and ban safe supply initiatives.^{xvi}

Decriminalization

Decriminalization is critical to reducing stigma and improving health for people who use criminalized drugs.^{xvii} A growing number of UN entities and human rights experts have expressed support for decriminalization, including in the UN System Common Position on Drugs^{xviii} endorsed by 31 UN agencies, and the International Guidelines on Human Rights and Drug Policy.^{xix}

Of the 10 provinces and 3 territories in Canada, only one has recently (January 31, 2023) decriminalized the possession of limited amounts of certain drugs.^{xx} The regulations and their implementation are, however, not in line with Canadian civil society recommendations^{xxi}:

- Specific drugs and amounts decriminalized are not reflective of current drug use patterns.
- People with visible drug use will likely benefit less, if at all, from decriminalization (e.g., some municipal governments are enacting reactionary by-laws prohibiting public drug consumption, resulting in the targeting of underhoused people in poverty).
- Limitations of the exemption and continued police focus on supply control measures mean police remain heavily involved.
- Application of criminal law sanctions and associated harms are now applied unevenly across Canada.

Involuntary treatment

Concerningly, harm reduction and decriminalization approaches are now being targeted and demonized, while requirements for “involuntary treatment” currently dominate Canadian

discourse – compulsory treatment legislation is a key election platform issue in the province of Alberta.^{xxii}

There is a lack of evidence in support of compulsory treatment which is inherently violent, disregards basic human rights to autonomy and self-determination, and has historically been used to target racialized and marginalized communities.^{xxiii} The evidence does not, overall, suggest improved outcomes. Some studies indicate potential harms, associated increased risks to marginalized populations^{xxiv} and a correlation between compulsory drug abstinence programs and increase overdose-related risk.^{xxv; xxvi} Recent research found individuals' substance use patterns were unchanged after coerced treatment.^{xxvii}

Involuntary treatment primarily infringes the right to health in two ways. First, this “treatment” generally disregards evidence-based practices, failing to meet the quality element of the right to health, as elaborated by the UN High Commissioner for Human Rights – “(f) ... ensure access to essential services for people who use drugs, including voluntary referrals to health, social, harm reduction and treatment services that are grounded in evidence, human rights and gender sensitivity.”^{xxviii} Second, “treatment” is often conducted in groups and disregards the need for individual informed consent. Article 7 of the International Covenant on Civil and Political Rights declares that “no one shall be subjected without his free consent to medical or scientific experimentation.”^{xxix}

In 2009, the UN High Commissioner for Human Rights Navi Pillay said, “Individuals who use drugs do not forfeit their human rights. All too often, drug users suffer discrimination, are forced to accept treatment, marginalized, and often harmed by approaches that over-emphasize criminalization and punishment while under-emphasizing harm reduction and respect for human rights.”^{xxx}

Summary

In Canada, the “war on drugs” has its origins in settler-colonialism, racism^{xxxi} and class-based oppression. To date, drug policies across Canada have been steeped in prohibition’s harmful and antiquated logic. Prohibitionist policies, racially targeted enforcement^{xxxii} and repressive global drug control laws have increased social inequalities, exacerbated negative health outcomes, created harmful stigma, and contributed to numerous human rights violations against people who use drugs.

We respectfully submit that the United Nations entities and Member States should adopt a right-to-health approach to drug control and consider developing a new legal framework for currently illegal drugs, to ensure the rights of people who use drugs are respected, protected, and fulfilled. Further, we encourage you to support widespread implementation of harm-

reduction initiatives and the decriminalization of certain laws governing drug control, which would improve the health and welfare of people who use drugs and the general population.

This approach aligns with existing UN perspectives. The United Nations General Assembly report A65/255, “Right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, notes:

The primary goal of the international drug control regime, as set forth in the preamble of the Single Convention on Narcotic Drugs (1961), is the “health and welfare of mankind”.

And further acknowledges:

The current international system of drug control has focused on creating a drug-free world, almost exclusively through use of law enforcement policies and criminal sanctions. Mounting evidence, however, suggests this approach has failed, primarily because it does not acknowledge the realities of drug use and dependence... this excessively punitive regime has not achieved its stated public health goals and has resulted in countless human rights violations.

Current approaches run contrary to this stated purpose and the harms are known and acknowledged. As the UN System Common Position on Drug Policy^{xxxiii} has emphasised, drug use and dependency should not be treated as a criminal matter, but rather as a health issue to be addressed through rights-based measures that promote health and well-being. Moreover, the threat of imprisonment or other penalties should not be used as a coercive tool to incentivise people into drug treatment. Drug treatment should always be voluntary and based on informed consent. To this end, all compulsory drug treatment should be stopped.^{xxxiv}

Recommendations

We encourage the UN High Commissioner for Human Rights to include in their report the following recommendations to Member States:

1. Develop a regulatory system for legal access to all currently controlled substances. Until then, decriminalize the possession of all drugs for personal use and remove all sanctions for such activities.
2. Immediately eliminate all police involvement in drug users’ lives, as well as repeal any potentially intersecting provisions, regulations and legislation that grants law enforcement a healthcare scope, including warnings and referrals to alternative measures.

3. Affirm a commitment to implementing and funding harm reduction supports.
4. Eliminate any form of involuntary or coercive treatment (including organizational policies such as employers or unions that mandate employees into involuntary treatment programs).
5. Encourage member states to invest in voluntary evidence-based treatment options that are available immediately upon request and accessible across geographic areas.
6. Adopt an approach to drug policies, and their implementation, that is consistent with human rights principles, protecting and promoting the rights of people who use drugs and other marginalized populations that are disproportionately affected by the war on drugs, including people with substance use health concerns, Indigenous people, other ethno-racial minorities, women, and incarcerated people.
7. Strongly denounce and eradicate the use of the death penalty for drug related offenses.

ⁱ www.drugpolicy.ca

ⁱⁱ www.hivlegalnetwork.ca

ⁱⁱⁱ www.cdpe.org

^{iv} [Controlled Drugs and Substances Act](#)

^v www.canlii.org/en/ca/scc/doc/2011/2011scc44/2011scc44.html?resultIndex=1

^{vi} www.canada.ca/en/health-canada/services/substance-use/supervised-consumption-sites.html

^{vii} www.canada.ca/en/health-canada/services/opioids/naloxone.html

^{viii} www.canada.ca/en/health-canada/services/opioids/responding-canada-opioid-crisis/safer-supply.html

^{ix} www.cbc.ca/news/canada/canada-illicit-drug-supply-explainer-1.6361623

^x www.drugchecking.cdpe.org/report/january-1-december-31-2022/

^{xi} [www.thelancet.com/journals/lanam/article/PIIS2667-193X\(23\)00011-X/fulltext](http://www.thelancet.com/journals/lanam/article/PIIS2667-193X(23)00011-X/fulltext)

^{xii} www.ccsa.ca/sites/default/files/2020-04/CCSA-CCENDU-Adulterants-Contaminants-Co-occurring-Substances-in-Drugs-Canada-Report-2020-en.pdf

^{xiii} www.sciencedirect.com/science/article/pii/S0955395921000098

^{xiv} www.health-infobase.canada.ca/substance-related-harms/opioids-stimulants

^{xv} www.nss-aps.ca/evidence-brief

^{xvi} www.cbc.ca/news/politics/poillievre-motion-drug-treatment-supply-1.6848116

^{xvii} www.ncbi.nlm.nih.gov/pmc/articles/PMC7348456/

^{xviii} www.unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy

^{xix} www.undp.org/publications/international-guidelines-human-rights-and-drug-policy

^{xx} www2.gov.bc.ca/gov/content/overdose/decriminalization

^{xxi} www.drugpolicy.ca/decrim-done-right

^{xxii} www.calgary.ctvnews.ca/alberta-ucp-promises-to-pass-law-for-involuntary-treatment-of-severely-drug-addicted-1.6399367

^{xxiii} [Why Have We Left Human Rights Out of Mental Health and Substance Use Health Care? \(Continuing Legal Education Society of BC\)](#)

^{xxiv} www.bccdc.ca/Health-Professionals-Site/Documents/Detention-based-Services-2021.pdf

^{xxv} www.ncbi.nlm.nih.gov/pmc/articles/PMC9027650/

^{xxvi} www.pivotlegal.org/involuntary_treatment_criminalization_by_another_name

^{xxvii} www.pubmed.ncbi.nlm.nih.gov/31379008/

^{xxviii} www.ohchr.org/en/documents/thematic-reports/ahrc5053-human-rights-and-hiv-aids-report-united-nations-high

^{xxix} www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

^{xxx} www.ohchr.org/en/press-releases/2009/10/un-human-rights-chief-calls-international-drugs-policy-include-focus-human

^{xxxi} www.drugpolicy.ca/about/racism

^{xxxii} www.vice.com/en/article/akvpe4/race-drug-arrests-canada

^{xxxiii} www.unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy

^{xxxiv} www.ohchr.org/en/statements/2022/06/end-war-drugs-and-promote-policies-rooted-human-rights-un-experts