

# SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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## CRIMINALIZATION OF PEOPLE WHO USE DRUGS

Racialized communities are disproportionately charged, prosecuted and incarcerated in Canada under laws that criminalize people who use drugs, depriving them of their rights to equal treatment in the justice system, to security of the person, and to health and social services.

According to data from the Toronto police collected from 2003 to 2013, **Black people with no history of criminal convictions were three times more likely to be arrested for possession of small amounts of marijuana than White people** with similar backgrounds.

According to Canada's federal prison ombudsperson, **80% of federal prisoners experience problematic substance use.** As the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* found, "persons described as black are most over-represented among prisoners charged with drug offences," with almost **20% of Black federal prisoners incarcerated for a drug-related offence.** In particular, Indigenous and Black women are more likely than White women to be in prison for that reason, and a staggering **53% of Black women in federal prisons are serving sentences for a drug-related offence,** many of whom were carrying drugs across borders as a way to alleviate their situations of poverty.

In 2012, the federal government intensified that discrimination with the passage of the *Safe Streets and Communities Act*, which introduced a number of punitive reforms, including mandatory minimum sentencing for non-violent drug offences. Despite purporting to only target those who *traffic* in drugs, the burden of harsher enforcement still falls most heavily on those with drug dependence.

Punitive drug policy also undermines efforts to address the health needs of people who use drugs, who face higher rates of HIV, hepatitis C and overdose as a result. An estimated **45% of new HIV infections among Indigenous people are attributed to injection drug use — more than four times the estimate for the population as a whole.** According to a report released on August 3, 2017, **First Nations people in British Columbia are also five times more likely to experience a drug overdose and three times more likely to die from one than non-First Nations people.** First Nations women, in particular, experience **eight times more overdoses and five times more fatal overdoses than non-First Nations women.**

On June 27, 2017, in a joint media statement, the UN and the World Health Organization (WHO) called for the "reviewing and repealing [of] punitive laws that have been proven to have negative health outcomes" including laws that criminalize "drug use or possession of drugs for personal use." An immense body of evidence indeed demonstrates that the continued, overwhelming emphasis on drug prohibition is not only failing to achieve the stated public health and public safety goals of prohibition, but also resulting in costly damage to the public purse, to public health and to human rights, in Canada and globally.

The Legal Network recommends that Canada

- **Minimize custodial sentences for people who commit non-violent offences, including repealing all mandatory minimum prison sentences for such offences;**
- **Expand evidence-based alternatives to incarceration for people who use drugs, taking into account the need for culturally appropriate care, including for women, Indigenous people, racialized minorities and youth;**

- **Ensure access to appropriate health and social support services (including evidence-based harm reduction services), and scale up access to evidence-based drug dependence treatment (including culturally appropriate and gender-specific treatment), for people who use drugs in need of such supports;**
- **Decriminalize the possession of all drugs for personal use and commit to examining appropriate models for the legalization and regulation of other currently illegal substances as part of an evidence-based, public-health approach to drug policy; and**
- **Ensure and support the full involvement of civil society organizations, including organizations and networks of people who use drugs, in the elaboration, implementation and evaluation of drug policy and services for people who use drugs.**

## **LACK OF HARM REDUCTION MEASURES IN PRISONS**

Canada's failure to provide prisoners, who are disproportionately Indigenous and Black, with equivalent access to health services, including key harm reduction measures, is a violation of their rights to health and social services, security of the person, equality and non-discrimination.

Significant numbers of prisoners use drugs. In a national survey conducted by the Correctional Service of Canada, **34% of men and 25% of women reported using non-injection drugs during the past six months in prison, while 17% of men and 14% of women reported injecting drugs.** Other studies have revealed high rates of syringe-sharing among people who use drugs in Canada's prisons, due to the lack of sterile injection equipment behind bars. Not surprisingly, research shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.

Already, rates of HIV and HCV in prison are considerably higher than they are in the community as a whole. A 2016 study indicated that about 30% of people in federal facilities and 15% of men and 30% of women in provincial facilities are living with HCV, and 1–2% of men and 1–9% of women are living with HIV. **Indigenous prisoners, in particular, have much higher rates of HIV and HCV than non-Indigenous prisoners. For example, Indigenous women in federal prisons are reported to have rates of HIV and HCV of 11.7% and 49.1%, respectively.**

In spite of the overwhelming evidence of the health benefits of prison-based needle and syringe programs (PNSPs) and opioid substitution therapy (OST), no Canadian prison currently permits the distribution of sterile injection equipment to prisoners and a number of provincial and territorial prisons do not offer OST to prisoners.

A number of UN agencies, including the UN Office on Drugs and Crime (UNODC), UNAIDS and the WHO, have recommended that prisoners have access to a series of key interventions, including needle and syringe programs, drug-dependence treatment including OST, and programs to address tattooing, piercing and other forms of skin penetration. In the *International Guidelines on HIV/AIDS and Human Rights*, UNAIDS and the Office of the UN High Commissioner on Human Rights call on prison authorities to “provide prisoners... with access to... condoms, bleach and clean injection equipment.” Similarly, the Madrid Recommendations — a series of recommendations on health protection in prisons that have been endorsed by representatives from 65 countries as well as the WHO, UNODC and the Council of Europe — recognizes “the urgent need in all prison systems for measures, programmes and guidelines which are aimed at preventing and controlling major communicable diseases in prisons,” including PNSPs, OST and condom distribution.

In 2016, the UN Committee on the Elimination of Discrimination against Women asked Canada to “expand care, treatment and support services to women in detention living with or vulnerable to HIV/AIDS, including by implementing prison-based needle and syringe programmes, opioid substitution therapy, condoms and other safer sex supplies.”

The Legal Network recommends that Canada

- **Implement key health and harm reduction measures in all prisons in Canada, including prison-based needle and syringe programs, opioid substitution therapy, condoms and other safer sex supplies, and safer tattooing programs, in consultation with prisoner groups and community health organizations to ensure operational success, taking into account the need for culturally appropriate and gender-specific programs.**