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**Follow-up to the implementation at the national,
regional and international levels of all
commitments, as reflected in the Ministerial
Declaration of 2019, to address and counter the
world drug problem**

Statement submitted by the Canadian HIV/AIDS Legal Network, a non-governmental organization in special consultative status with the Economic and Social Council**

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

* [E/CN.7/2021/1](#).

** Issued without formal editing.



Promoting equity and evidence in drug policy in the midst and wake of COVID-19

Introduction and Objectives

This brief is submitted by the Canadian HIV/AIDS Legal Network¹ (Special Consultative Status) on behalf of the Canadian Civil Society Working Group on United Nations Drug Policy. It should be considered alongside the submission by the Canadian Centre on Substance Use and Addiction, which also makes recommendations related to recognizing the impacts of COVID-19 on people who use drugs and to safe supply.

The following recommendations highlight priority areas in which Member States can play a leadership role in advancing evidence-informed, inclusive and effective drug policy that is grounded in a public health approach and in alignment with complementary United Nations initiatives, including the promotion of human rights and achievement of the Sustainable Development Goals.

Recommendations

1. Ensuring equity for people who use drugs from racialized communities, including Indigenous populations, and across genders

Repeatedly, expressly and by consensus, Member States have directed drug control efforts to conform with the standards of international human rights.² Further, the 2030 Agenda for Sustainable Development lists “Leaving no one behind” as one of the fundamental aims of the Sustainable Development Goals.³ This necessarily includes racialized communities (including Indigenous populations) and people of all gender identities. Current drug policies have had a disproportionate and discriminatory impact on women, people of diverse gender identities,⁴ as well as racialized and Indigenous communities. As United Nations bodies, including United Nations human rights committees, have recognized, determinants of health such as stigma, sexism, racism, colonialism, intergenerational trauma, homophobia, transphobia, poverty, housing insecurity and homelessness, pregnancy and parenting, physical and sexual violence, as well as repressive laws and policies that disproportionately affect women, people of diverse gender identities and racialized communities are not sufficiently accounted for in the design of health strategies directed at people who use drugs.

The impact of punitive drug laws is gendered. Substantially more men than women are prosecuted and incarcerated for drug offences in Canada. At the same time, a higher proportion of women in prison are incarcerated for drug offences than among men in prison. Women also face barriers to treatment and harm reduction services. Despite women comprising one in three of every person who uses drugs, only one out of five people in drug treatment are women.⁵ In 2016, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern about “the excessive use of incarceration as a drug-control measure against women and the ensuing female over-population in prison,” as well as “the significant

¹ The Canadian HIV/AIDS Legal Network has changed its working name to HIV Legal Network.

² For example, see *1998 UNGASS Declaration*, para. 8; CND, 53rd Session, Resolution 53/2, para. 2.; www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND53_2e.pdf; and *2016 UNGASS Outcome Document*, preamble, www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf.

³ General Assembly Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development A/RES/70/1* (25 September 2015), <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

⁴ Center for American Progress, *Unjust: How the broken criminal justice system fails transgender people* (Report, Movement Advancement Project, 2016), 8.

⁵ United Nations Office on Drugs and Crime (UNODC) (2020), *World Drug Report 2020* (United Nations Publication, Sales No. E.20.XI.6), https://wdr.unodc.org/wdr2020/field/WDR20_BOOKLET_1.pdf.

legislative and administrative barriers women face to access supervised consumption services,” consequently calling on Canada to “reduce the gap in health service delivery related to women’s drug use, by scaling-up and ensuring access to culturally appropriate harm reduction services” and to repeal “mandatory minimum sentences for minor, non-violent drug-related offences.”⁶

Similarly, the United Nations Committee on the Elimination of Racial Discrimination (CERD) in 2017 expressed concern at the disproportionately high rate of incarceration of Indigenous peoples and African-Canadians and called for “evidence-based alternatives to incarceration for non-violent drug users.”⁷

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that “Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health.”⁸ Further, approaches founded on Indigenous knowledge and culture ensure a more holistic approach to drug use and control.

Notwithstanding general rhetorical affirmations of human rights, attention to specific human rights concerns in the context of drug policy remains contentious at the CND.⁹ In Canada, individuals in Black and Indigenous communities are disproportionately charged, prosecuted and incarcerated for drug offences.¹⁰ Drug policies affecting Indigenous populations remain largely based on colonial norms, laws and customs, leading to disproportionate rates of incarceration and police persecution. While accounting for only 5 per cent of the population in Canada as a whole, as of January 2020, Indigenous prisoners made up 30.4 per cent of the total federal prison population – an increase of 43.4 per cent since 2010.¹¹ Furthermore, 40 per cent of federally incarcerated women in Canada are Indigenous, and Indigenous women are more likely than white women to be imprisoned for drug offences.¹² At the same time, almost 20 per cent of Black federal prisoners are incarcerated for a drug offence,¹³

⁶ United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, United Nations Doc. CEDAW/C/CAN/CO/8–9, November 18, 2016, paras. 44–45.

⁷ United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, United Nations Doc. CERD/C/CAN/CO/21–23, September 13, 2017, paras. 15 and 16(d).

⁸ United Nations General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. Retrieved from Department of Economic and Social Affairs Indigenous Peoples: www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html.

⁹ Human Rights Council (4 September 2015), *Study on the Impact of the World Drug Problem on the Enjoyment of Human Rights: Report of the United Nations High Commissioner for Human Rights*, United Nations Doc. A/HRC/30/65, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_65_E.d.pdf; Human Rights Council (14 September 2018), *Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights: Report of the Office of the United Nations High Commissioner for Human Rights*, United Nations Doc. A/HRC/39/39, www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session39/Documents/A_HRC_39_39.docx.

¹⁰ Commission on Systemic Racism in the Ontario Criminal Justice System, *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; 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; D. Fumano, “New figures reveal the racial disparity in Vancouver drug charges,” *Vancouver Sun*, August 7, 2020.

¹¹ Office of the Correctional Investigator (2020), “*Indigenous People In Federal Custody Surpasses 30% - Correctional Investigator Issues Statement And Challenge*,” (Press Release) 2020, www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx.

¹² Office of the Correctional Investigator (2018), *Office of the Correctional Investigator Annual Report 2017–2018*. (Ottawa: Government of Canada), www.ocibec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx.

¹³ Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2014.

and Black women in particular are more likely than white women to be in prison for that reason.¹⁴

For drug policy to create greater equity for Indigenous peoples, it must support access to and availability of resources to enable an Indigenous-specific public health approach, guided by Indigenous knowledge. Focused attention and equitable capacity to address the Indigenous determinants of health (colonialism and its ongoing racism, social exclusion, denial of cultural continuity, political and territorial sovereignty as well as self-determination) are essential to reduce harms from drugs and drug policy. Additionally, cultural connection and access to culturally relevant services are identified as key sources of resilience for Indigenous people, including those struggling with problematic drug use and who are vulnerable to or living with HIV.

Member states have resolved to reduce stigma affecting people who use drugs.¹⁵ Criminalized drug possession is one of the main driving factors behind both individual and systemic stigma and discrimination affecting people who use drugs. This stigma and discrimination perpetuates widespread human rights violations, while also preventing people from seeking and accessing vital services. Criminalization of drug possession disproportionately impacts Indigenous peoples, people of colour and women. The decriminalization of drug possession for personal use has been called for expressly by 12 United Nations agencies (including the World Health Organization, UNAIDS and the Office of the United Nations High Commissioner for Human Rights) in their 2017 Joint Statement on Ending Discrimination in Healthcare Settings¹⁶ and by all agencies of the United Nations system in a common position released in early 2019.¹⁷ Importantly, administrative sanctions such as fines, mandatory referrals to treatment or the confiscation of substances must not be introduced as an alternative to criminal sanctions, as this would authorize law enforcement to continue to surveil and police people who use drugs – a practice that will have a disproportionate impact on Indigenous, Black and other marginalized communities.

We urge Member States to promote recognition and advance discussions, including in statements delivered at the CND, of the negative impacts of current drug policies on women, people of diverse gender identities as well as racialized and Indigenous communities, and to support accessible, gender-sensitive and culturally appropriate drug treatment, harm reduction and other drug-related health services that are tailored to meet their specific needs.

We also urge Member States to express support for the decolonization of drug policy, the full decriminalization of possession of scheduled substances for personal use, the prohibition of all forms of racial profiling by law enforcement and the creation of participatory roles for Indigenous peoples in treatment and prevention measures.

We also urge Member States to acknowledge the unique experiences and needs of people who use drugs from racialized communities, including Indigenous populations, and across gender in all resolutions.

¹⁴ Office of the Correctional Investigator of Canada, *Annual Report 2014–2015 of the Office of the Correctional Investigator*, 2015.

¹⁵ CND, 61st Session, Resolution 61/11, *Promoting non-stigmatizing attitudes to ensure the availability, access and delivery of health, care and social services for drug users* www.unodc.org/documents/commissions/CND/CND_Sessions/CND_61/CND_res2018/CND_Resolution_61_11.pdf.

¹⁶ World Health Organization (2017), *Joint United Nations statement on ending discrimination in health care settings*, www.who.int/news/item/27-06-2017-joint-united-nations-statement-on-ending-discrimination-in-health-care-settings

¹⁷ United Nations Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, United Nations System, 2nd regular session of 2018, United Nations Doc [CEB/2018/2](#), January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, United Nations Doc. [CEB/2018/2](#), January 18, 2019.

Finally, we urge Member States to model and promote harmonization of domestic laws and policies with international human rights standards, especially those protecting racialized and Indigenous communities as well as people of all gender identities.
