



## Submission to the United Nations High Commissioner for Human Rights

### The decriminalisation of people who use drugs: An essential component of a human rights-based approach to drug policy

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**Submitting organisations:**

The International Drug Policy Consortium (IDPC) is a global network of NGOs that work for drug policy reform in order to advance social justice and human rights. Contact: [contact@idpc.net](mailto:contact@idpc.net)

Instituto RIA AC is a Mexican civil society organisation that undertakes high quality research and advocacy within a social justice and peace building framework. Contact: [zsnapp@gmail.com](mailto:zsnapp@gmail.com)

Harm Reduction International (HRI) is an international, not-for-profit NGO working towards the promotion of harm reduction and drug policy reform that uphold dignity, health and rights. Contact: [Ajeng.Larasati@hri.global](mailto:Ajeng.Larasati@hri.global)

The Centre on Drug Policy Evaluation (CDPE) strives to improve community health and safety by conducting research and outreach on best practices in drug policy. Contact: [nazlee.maghsoudi@mail.utoronto.ca](mailto:nazlee.maghsoudi@mail.utoronto.ca)

Health[e]Foundation is a global health organisation that provides digital health education and mobile innovations, strengthening healthcare systems and communities. Contact: [daphne@healthefoundation.eu](mailto:daphne@healthefoundation.eu)

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## Introduction

1. This submission provides data and recommendations on the urgent need to decriminalise drug use and related activities to respect, protect and fulfil the human rights of people who use drugs. We urge the High Commissioner to recommend that States adopt the gold standard for the decriminalisation of people who use drugs.

## Criminalisation as a driver of human rights violations

2. Criminalisation has devastating consequences on the human rights of people who use drugs, particularly those facing intersecting forms of criminalisation, stigma and marginalisation.
3. **Right to health:** The criminalisation of people who use drugs has severe impacts on their health and well-being. They are 35 times more likely to contract HIV than people who do not inject drugs.<sup>1</sup> Outside Sub-Saharan Africa, 20% of new HIV infections are associated with injecting drug use – rising to 25% in the Middle East and North Africa,<sup>2</sup> and to 43% in Eastern Europe and Central Asia.<sup>3</sup> In addition, one in two people who inject drugs are living with hepatitis C.<sup>4</sup> Fear of interaction with law enforcement, punishment and stigma drive people who use drugs away from life-saving harm reduction, drug treatment and other healthcare services, increasing their vulnerability to blood-borne diseases and overdoses. At the same time, the criminalisation of possession of drug use paraphernalia (e.g. sterile needles and syringes, crack pipes) undermines efforts to curb HIV and hepatitis.<sup>5</sup> A history of arrest and police violence is also associated with worse mental health outcomes.<sup>6</sup> Women and LBGTQI+ people who use drugs are particularly vulnerable to these risks, facing increased obstacles in accessing services because of heightened and intersecting stigma and discrimination, lack of availability of gender-sensitive services, and fear of arrest, police abuse and incarceration.<sup>7</sup>
4. **Right to liberty:** The Working Group on Arbitrary Detention (WGAD) has established that detention is not an appropriate response to drug use.<sup>8</sup> However, 470,000 people are incarcerated for drug possession for personal use worldwide – representing 4% of the global prison population,<sup>9</sup> and hundreds of thousands

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<sup>1</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/JC3032\\_AIDS\\_Data\\_book\\_2021\\_En.pdf](https://www.unaids.org/sites/default/files/media_asset/JC3032_AIDS_Data_book_2021_En.pdf), p. 11

<sup>2</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/JC3032\\_AIDS\\_Data\\_book\\_2021\\_En.pdf](https://www.unaids.org/sites/default/files/media_asset/JC3032_AIDS_Data_book_2021_En.pdf), p. 310

<sup>3</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/JC3032\\_AIDS\\_Data\\_book\\_2021\\_En.pdf](https://www.unaids.org/sites/default/files/media_asset/JC3032_AIDS_Data_book_2021_En.pdf), p. 354

<sup>4</sup> UNODC (2022), 'Booklet 2: Global overview - drug demand, drug supply', *World Drug Report 2022*, [https://www.unodc.org/res/wdr2022/MS/WDR22\\_Booklet\\_2.pdf](https://www.unodc.org/res/wdr2022/MS/WDR22_Booklet_2.pdf)

<sup>5</sup> See: [http://globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/GCDP\\_HIV-AIDS\\_2012\\_REFERENCE.pdf](http://globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/GCDP_HIV-AIDS_2012_REFERENCE.pdf);

[http://www.globalcommissionondrugs.org/hepatitis/gcdp\\_hepatitis\\_english.pdf](http://www.globalcommissionondrugs.org/hepatitis/gcdp_hepatitis_english.pdf);

<http://www.countthecosts.org/sites/default/files/Health-briefing.pdf>

<sup>6</sup> See: [http://filesserver.idpc.net/library/10-year%20review\\_ASIA.pdf](http://filesserver.idpc.net/library/10-year%20review_ASIA.pdf), p. 32; See: [https://idpc.net/publications/2022/01/marginalising-the-most-marginalised-gathering-evidence-on-how-the-welfare-stare-discriminates-against-people-who-use-drugs](https://idpc.net/publications/2022/01/marginalising-the-most-marginalised-gathering-evidence-on-how-the-welfare-state-discriminates-against-people-who-use-drugs)

<sup>7</sup> [https://www.unodc.org/documents/hiv-aids/2016/Addressing\\_the\\_specific\\_needs\\_of\\_women\\_who\\_inject\\_drugs\\_Practical\\_guide\\_for\\_service\\_providers\\_on\\_gender-responsive\\_HIV\\_services.pdf](https://www.unodc.org/documents/hiv-aids/2016/Addressing_the_specific_needs_of_women_who_inject_drugs_Practical_guide_for_service_providers_on_gender-responsive_HIV_services.pdf), p. 10

<sup>8</sup> See: <https://undocs.org/A/HRC/47/40>, para. 84 amongst others

<sup>9</sup> See: [http://filesserver.idpc.net/library/UN\\_What\\_we\\_have\\_learned.pdf](http://filesserver.idpc.net/library/UN_What_we_have_learned.pdf), p. 24

more are subject to administrative detention, often under the guise of ‘treatment’.<sup>10</sup> Between 56% and 90% of people who inject drugs will be incarcerated at some stage in their lives.<sup>11</sup> Worryingly, the levels of drug dependence, HIV, tuberculosis and hepatitis C are significantly higher in prisons than in the community.<sup>12</sup>

5. **Right to privacy:** Criminalisation is often paired with surveillance policies that impinge on the right to privacy of people who use drugs. In several countries, especially in Asia,<sup>13</sup> law enforcement can force people to undergo mandatory urine testing, an invasive practice that is inadequate to assess drug dependence.<sup>14</sup> Additionally, various countries<sup>15</sup> require the compulsory registration of people who use drugs in public state records.
6. **Economic and social rights:** The stigma and discrimination derived from criminalisation can limit access to basic social services such as housing, education, or benefits for people who use drugs. In a 2021 survey<sup>16</sup> gathering responses from 26 countries, stigma was reported as a barrier to accessing health care in 88% of these countries, to maternity care in 65% of them, and to public housing in 73% of them. Stigma was perceived as hampering access to public education and benefits.
7. **Right to be free from discrimination:** The deployment of criminalising laws against people who use drugs has been discriminatory, targeting people with intersecting forms of marginalisation on the basis of their race, ethnicity, gender identity or sexual orientation, and socio-economic status.<sup>17</sup> In the UK, Black and Asian people are convicted for cannabis possession at 11.8 and 2.4 times the rate of white people, despite lower rates of self-reported cannabis use.<sup>18</sup> In the USA, although Black people comprise 13% of the US population and use drugs at similar rates to others, they comprise 29% of those arrested for drug offences and nearly 40% of those incarcerated for drug offences.<sup>19</sup> Data from the Global Drug Policy Index<sup>20</sup> also shows that criminal justice responses to drugs disproportionately impact low-income groups in all 30 surveyed countries, while several countries report disproportionate impacts on ethnic minorities and women.

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<sup>10</sup> See: <https://unaidsapnew.files.wordpress.com/2022/01/booklet-1-12th-jan-2022.pdf>

<sup>11</sup> See: [http://www.unaids.org/en/resources/documents/2014/20140716\\_UNAIDS\\_gap\\_report](http://www.unaids.org/en/resources/documents/2014/20140716_UNAIDS_gap_report)

<sup>12</sup> See: [https://www.unodc.org/docs/treatment/111\\_PRISON.pdf](https://www.unodc.org/docs/treatment/111_PRISON.pdf), p. 11

<sup>13</sup> See: [http://filesserver.idpc.net/library/10-year%20review\\_ASIA.pdf](http://filesserver.idpc.net/library/10-year%20review_ASIA.pdf), p. 32

<sup>14</sup> See: <https://drive.google.com/file/d/1DBGu24ggfDEzv57QEeSf1YZ8ZYvnwuC/view>

<sup>15</sup> Including at least 9 Asian countries. See: [http://filesserver.idpc.net/library/10-year%20review\\_ASIA.pdf](http://filesserver.idpc.net/library/10-year%20review_ASIA.pdf), p. 32

<sup>16</sup> See: <https://idpc.net/publications/2022/01/marginalising-the-most-marginalised-gathering-evidence-on-how-the-welfare-state-discriminates-against-people-who-use-drugs>

<sup>17</sup> See: <https://undocs.org/A/HRC/47/40>, para. 51

<sup>18</sup> See: <https://www.release.org.uk/sites/default/files/pdf/publications/HRI%20and%20Release%20-%20Contribution%20to%20the%20OCHR%20Report.pdf>; <https://www.release.org.uk/publications/numbers-black-and-white-ethnic-disparities-policing-and-prosecution-drug-offences>

<sup>19</sup> See: [https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf).  
<https://undocs.org/en/A/HRC/33/61/Add.2>

<sup>20</sup> See: <https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report%20EN.pdf>, pp. 41 to 46

## The broad consensus for decriminalisation

8. Many UN entities and human rights experts are promoting decriminalisation as a core component of a rights- and health-based approach towards people who use drugs, including OHCHR,<sup>21</sup> UNAIDS,<sup>22</sup> WHO,<sup>23</sup> UNDP,<sup>24</sup> UN Women,<sup>25</sup> High Commissioner for Human Rights,<sup>26</sup> the CESCR Committee,<sup>27</sup> the WGAD<sup>28</sup> and the Special Rapporteur on health.<sup>29</sup> The UN system Common Position on drugs, the UN overarching policy document on drug policy, promotes decriminalisation amongst its directions for action.<sup>30</sup> Finally, the INCB has concluded that decriminalisation is aligned with the UN drug control treaties.<sup>31</sup>
9. Worldwide, 64 jurisdictions in 37 countries have decriminalised drug use and possession.<sup>32</sup> The overarching objective of decriminalisation is to end the punishment and stigmatisation of people who use drugs. When implemented under a harm reduction-oriented approach, decriminalisation provides a supporting and enabling legal framework within which health interventions can be voluntarily accessed without fear of stigma, arrest and detention, leading to improved health and human rights outcomes.<sup>33</sup>
10. In practice, however, each country designs and implements decriminalisation differently – and they often fall short from the gold standard, which entails the removal of all punishment.<sup>34</sup> If effectively designed and implemented, decriminalisation can be a powerful instrument to ensure that the rights of people who use drugs are protected.

## The gold standard of decriminalisation

11. **Decriminalised activities:** The types of activities decriminalised vary from country to country. Decriminalisation should cover drug use, possession for personal use, the cultivation of certain plants for personal use (e.g. cannabis, coca), social sharing (i.e. being in possession of larger amounts of drugs to share among friends and peers for no financial gain),<sup>35</sup> and the possession of drug use paraphernalia.

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<sup>21</sup> See: <https://www.ohchr.org/EN/NewsEvents/Pages/Drug-policy.aspx>

<sup>22</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/global-AIDS-strategy-2021-2026\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/global-AIDS-strategy-2021-2026_en.pdf)

<sup>23</sup> See: <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>

<sup>24</sup> See: <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

<sup>25</sup> See: [https://www.unodc.org/documents/ungass2016//Contributions/UN/Gender\\_and\\_Drugs\\_-\\_UN\\_Women\\_Policy\\_Brief.pdf](https://www.unodc.org/documents/ungass2016//Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf)

<sup>26</sup> See: A/HRC/30/65

<sup>27</sup> See: E/C.12/NOR/CO/6, p. 43

<sup>28</sup> See: A/HRC/42/39/ADD.1

<sup>29</sup> See: A/65/255

<sup>30</sup> See: <https://unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy>

<sup>31</sup> See: [https://www.incb.org/documents/Speeches/Speeches2020/INCB\\_President\\_statement\\_Norway\\_side\\_event\\_drug\\_reform.pdf](https://www.incb.org/documents/Speeches/Speeches2020/INCB_President_statement_Norway_side_event_drug_reform.pdf)

<sup>32</sup> As of March 2023. See: <https://www.talkingdrugs.org/drug-decriminalisation>

<sup>33</sup> See: <http://idpc.net/publications/2016/03/public-health-approach-to-drug-use-in-asia-decriminalisation>

<sup>34</sup> For shortcomings see: [https://www.inpud.net/sites/default/files/INPUD\\_Decriminalisation%20report\\_online%20version.pdf](https://www.inpud.net/sites/default/files/INPUD_Decriminalisation%20report_online%20version.pdf)

<sup>35</sup> Note that various NGOs also include the ‘sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply’ in the list of such activities. See: <https://www.drugpolicy.ca/wp-content/uploads/2021/12/EN-PTI-Decrim.pdf>

- 12. Focusing on all substances:** While some decriminalisation models only cover specific substances (generally cannabis), an effective decriminalisation model should cover all drugs.
- 13. A health and rights response:** After removing criminal sanctions, many jurisdictions have opted for administrative sanctions (going from fines and educational courses, all the way to administrative detention) and referrals to health and social services, while others do not take any action. The gold standard is a model whereby no more sanctions (whether administrative or criminal) are imposed, and where mechanisms are in place to ensure voluntary access to adequately funded gender- and age-sensitive harm reduction, treatment, health and social services.
- 14. Expungement of criminal records:** Decriminalisation will go a long way towards reducing the prison population, but requires jurisdictions to expunge criminal records for those individuals who were condemned for drug use and related activities prior to the reform. Reparation measures should also be established to repair the harms caused by criminalisation on those communities particularly affected by drug control prior to decriminalisation.
- 15. Training and sensitisation:** Decriminalisation requires that public authorities be sensitised and trained on the objectives of decriminalisation, how it will work, and what are the implications for their daily work, to ensure that the policy is effectively implemented. Sensitisation campaigns should also target the general public.
- 16. Redirect resources away from policing and towards health:** Globally, at least USD 100 billion is spent each year on drug law enforcement. 10% of such spending for one year could cover global HIV prevention for people who inject drugs for four years.<sup>36</sup> It is critical that financial resources be redirected away from policing and drug law enforcement and towards evidence-based health and social measures for people who use drugs, including harm reduction and treatment.
- 17. Meaningful participation of affected communities:** People who use drugs should be meaningfully engaged in the design, implementation and evaluation of decriminalisation policies to ensure that their knowledge and first-hand experiences are taken into account in the model and to prevent, avoid or redress possible negative consequences of decriminalisation.
- 18. We call on the High Commissioner to make an unequivocal call for all States to decriminalise drug use and related activities, with the removal of all sanctions and possibilities for voluntary referrals to health, social, harm reduction and treatment services that are grounded in evidence, human rights and gender-sensitivity.**

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<sup>36</sup> <https://hri.global/topics/funding-for-harm-reduction/redirecting-funds/>