



CENTRE ON
DRUG POLICY
EVALUATION

Submission to the United Nations High Commissioner for Human Rights pursuant to HRC Res. 43/1 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers”

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I. Introduction

The HIV Legal Network (formerly the Canadian HIV/AIDS Legal Network) promotes the human rights of people living with, at risk of or affected by HIV or AIDS, in Canada and internationally, through research and analysis, litigation and other advocacy, public education and community mobilization. Since the HIV Legal Network's inception, the organization has advocated for drug policies that respect, protect and fulfill the human rights of people who use drugs, including those who are in prison.

The [Centre on Drug Policy Evaluation \(CDPE\)](#) works collaboratively with governments, affected communities and civil society to improve community health and safety by conducting research and outreach on effective and evidence-based policy responses to substance use. Founded in Vancouver, Canada in 2010 as the International Centre for Science in Drug Policy (ICSDP), the CDPE is now housed within the Li Ka Shing Knowledge Institute at St. Michael's Hospital, a site of Unity Health Toronto, in Toronto, Canada.

We are grateful to the UN Office of the High Commissioner for Human Rights for the opportunity to make this submission, focusing on human rights violations against people in Canada of African descent, in the context of Canada's drug laws and policies.

II. Disproportionate impact of punitive drug policy on Black communities

In Canada, "controlled substances" are governed by the federal [Controlled Drugs and Substances Act \(CDSA\)](#), which applies across the country. Under section 4(1) of the CDSA, unauthorized possession of a substance for personal use (or "simple drug possession") is a criminal offence. The penalty for contravening this provision depends on the substance and how it is "scheduled" and can range from a fine to a maximum 7-year sentence. "Trafficking" is defined to include any act of selling, administering, giving, transferring, transporting, sending or delivering of a controlled substance — or offering to do any of these things — unless authorized by a regulation, whether for a profit or for free. The maximum penalty upon conviction for trafficking, or possession for the purpose of trafficking, is life in prison. Importing, exporting and production of controlled substances are also criminal offences.

In Canada and around the world, punitive drug laws and policies have done catastrophic harm, fuelling deadly stigma, epidemics of preventable illness and death, and widespread, systematic and egregious violations of human rights. Drug prohibition has contributed to an overdose crisis that has resulted in [more than 16,000 overdose deaths](#) between January 2016 and March 2020 nationwide.¹ Canada's drug control framework is also rooted in, and reinforces, racism and colonialism.

¹ Government of Canada, *Opioid-related harms in Canada*, September 2020.

For the period 2014 to 2019, police in Canada made more than 540,000 arrests for drug offences; 69% of those were for simple drug possession.² **Troublingly, Black and other racialized communities in Canada are disproportionately charged, prosecuted and incarcerated for drug offences, depriving them of their rights to equality and non-discrimination in the criminal legal system, to freedom from arbitrary arrest and detention, to security of the person and to the highest attainable standard of health.** As the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System concluded more than two decades ago, “persons described as black are most over-represented among prisoners charged with drug offences”³ — a reality that persists today.

Racial profiling and targeting Black people for drug offences

A growing body of research confirms that Black people bear a disproportionate burden of law enforcement in Canada. As one scholar has noted, “[Racial profiling has ... become a pervasive reality for Black Canadians](#). ... Without reasonable cause, police stop Black people on the pretext of enforcing various laws, such as traffic violations, but are actually in search of illegal drugs.”⁴ In Toronto, for example, [a recent study](#) found that Black people were more likely to be charged, over-charged and arrested by the Toronto police.⁵ Black communities in Canada have also long been the target of intensive policing for drug offences. Research shows that, while Black people are not more likely to commit drug offences, they are more likely to be surveilled, arrested and incarcerated for drug offences:

- In a 1995 study of racism in the province of Ontario, report authors noted that intensive policing of low-income areas where Black people live produced arrests of a large and disproportionate number of Black people accused of drug trafficking, and intensive policing of airline travellers produced arrests of a disproportionate number of Black female couriers. The study also found pre-trial admission rate for Black people for drug trafficking or importing charges was 27 times higher than for white defendants; for personal drug possession charges, the pre-trial admission rate for Black people was 15 times higher. Police decisions to detain Black accused at a higher rate than white accused meant that

² Statistics Canada, *Police-reported crime statistics in Canada: Police-reported crime for selected offences, Canada, 2014 and 2015*, July 20, 2016; Statistics Canada, *Police-reported crime statistics, 2016*, July 24, 2017; Statistics Canada, *Unfounded criminal incidents in Canada, 2017: Police-reported crime for selected offences, Canada, 2017*, July 23, 2018; Statistics Canada, *Police-reported crime statistics, 2018*, July 22, 2019; and Statistics Canada, *Police-reported crime statistics in Canada*, 2019, October 29, 2020.

³ Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995.

⁴ A. Khenti, “The Canadian war on drugs: Structural violence and unequal treatment of Black Canadians,” *International Journal of Drug Policy* 25 (2014) 190–195.

⁵ Ontario Human Rights Commission, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, August 10, 2020.

bail courts saw a significantly higher proportion of Black accused, resulting in larger proportions of Black accused being jailed before trial.⁶

- [Data collected from 2003 to 2013 by the Toronto Police Service](#) indicate Black people with no history of criminal convictions were three times more likely to be arrested for possession of small amounts of cannabis than white people with similar backgrounds.⁷
- A [2018 report](#)⁸ and a [2020 study](#)⁹ found that Black (and Indigenous) people were overrepresented in cannabis possession arrests across Canada. In Halifax, Nova Scotia, for example, Black people were 4.1 times more likely to be arrested for cannabis possession than their representation in the general population would predict.
- A [2019 study](#) of cases between 2007–2013 found that Black youth accused of cannabis possession in Ontario were more likely to be charged and less likely to be cautioned than white youth and youth from other racial backgrounds.¹⁰
- A [2020 report](#) found that Black (and Indigenous) people are dramatically overrepresented in drug charges recommended by the Vancouver Police Department (VPD). Since 2014, Black people have accounted for 6.4% of drug trafficking and possession charges recommended by VPD, despite making up only 1% of the city's population.¹¹

As the Ontario Human Rights Commission has [concluded](#), **the gross overrepresentation of Black people in drug charges “raise concerns of systemic racism and anti-Black racial bias, because the over-representation of Black people in drug possession charges does not align with what is known about drug use within Black communities.”**¹² The impact of discriminatory surveillance, arrest, prosecution and incarceration is extensive, resulting “in damaged individual and family lives and devastated Black communities forced to cope with increasing violence over generations of incarceration” as well as “intensified levels of stigma.”¹³ According to the

⁶ *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, supra.

⁷ J. Rankin and S. Contenta, “Toronto marijuana arrests reveal ‘startling’ racial divide,” *Toronto Star*, July 6, 2017.

⁸ R. Browne, “Black and Indigenous people are overrepresented in Canada's weed arrests,” *Vice News*, April 18, 2018.

⁹ 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.

¹⁰ K. Samuels-Wortley, “Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada,” *Race and Justice* 1-24 (2019).

¹¹ D. Fumano, “New figures reveal the racial disparity in Vancouver drug charges,” *Vancouver Sun*, August 7, 2020

¹² *A Disparate Impact*, supra.

¹³ A. Khenti, supra.

[Ontario Human Rights Commission](#), not only are individuals burdened with a criminal record, but the human cost of racial profiling includes increased fear, a sense of intimidation, reinforced anxieties, enhanced feelings of helplessness and hopelessness, and more broadly, a sense of alienation and mistrust of institutions.¹⁴

In 2017, concerned at reports of racial profiling and disproportionately high rate of incarceration of Black and other racialized communities in Canada due to, among other factors, “overpolicing of certain populations, drug policies and racially biased sentencing,” the [Committee on the Elimination of Racial Discrimination recommended that Canada](#), “Address the root causes of overrepresentation of African-Canadians and indigenous peoples at all levels of the justice system, from arrest to incarceration, such as by eliminating poverty, providing better social services, **re-examining drug policies**, preventing racially biased sentencing through training of judges, and providing evidence-based alternatives to incarceration for non-violent drug users ...”.¹⁵

One key response to mitigate the harms of drug prohibition is the decriminalization of simple drug possession. Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights, including the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Program (UNDP), the UN Special Rapporteur on the right to health,¹⁶ and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment.¹⁷ In 2018, all agencies of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues) adopted a common position recommending to all governments that they decriminalize simple drug possession.¹⁸

The [International Guidelines on Human Rights and Drug Policy](#), co-published by the International Centre on Human Rights and Drug Policy, UNDP, UNAIDS and WHO, also

¹⁴ Ontario Human Rights Commission, *Paying the price: The human cost of racial profiling: Inquiry report*, 2003.

¹⁵ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, UN Doc. CERD/C/CAN/CO/21-23, 13 September 2017.

¹⁶ See, for example, A. Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010 and A. Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012.

¹⁷ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

¹⁸ UN Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN 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, UN Doc. CEB/2018/2, January 18, 2019.

call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption,”¹⁹ as a means for States to meet their obligation to uphold the right to the highest attainable standard of health. Similarly, the Global Commission on Drug Policy, comprising former heads of state or government and other eminent political, economic and cultural leaders, has highlighted the tremendous damage caused by the criminalization of people who use drugs and [called for the removal of all punitive responses to drug possession and use](#).²⁰

Overrepresentation of Black people and lack of equivalent access to health care in prison

The legacy of racist law enforcement and criminal law practices has also meant that Black people are staggeringly over-represented in prisons in Canada. As the Correctional Investigator (Canada’s ombudsperson for federal prisons, where people serve a sentence of 2+ years) has noted, “[Black inmates are one of the fastest growing sub-populations in federal corrections](#).”²¹ While accounting for only [3.5% of Canada’s total population](#),²² Black people in 2018-2019 represented [8% of the federal prison population](#).²³

Moreover, almost 20% of Black federal prisoners are incarcerated for a drug-related offence.²⁴ In particular, Black women are more likely than white women to be in prison for that reason.²⁵ According to the Correctional Investigator of Canada, 54% of Black women in federal prisons were serving sentences for drug-related offences in 2017,²⁶ many of whom were carrying drugs across borders as a way to alleviate their situations of poverty, including some who reported being forced into these activities with threats of violence to their children and/or families.²⁷

Significant numbers of prisoners also use drugs. In a national survey conducted by the Correctional Service Canada (the federal correctional service), 34% of men and 25% of women reported using non-injection drugs during the past six months in prison, while

¹⁹ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP and WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019.

²⁰ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization*, 2016.

²¹ Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2014.

²² Statistics Canada, *Diversity of the Black population in Canada: An overview*, February 27, 2019.

²³ Office of the Correctional Investigator, *Annual Report of the Office of the Correctional Investigator 2018-2019*, June 25, 2019.

²⁴ *A Case Study of Diversity in Corrections*, *supra*.

²⁵ Office of the Correctional Investigator of Canada, *Annual Report 2014–2015 of the Office of the Correctional Investigator*, 2015.

²⁶ Office of the Correctional Investigator of Canada, *Annual report of the Office of the Correctional Investigator 2016-2017*, 2017.

²⁷ Office of the Correctional Investigator of Canada, *Annual report of the Office of the Correctional Investigator, 2012-2013*, 2013.

17% of men and 14% of women reported injecting drugs.²⁸ 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.²⁹ Not surprisingly, research shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.³⁰

Already, rates of HIV and HCV in prison are significantly 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.³¹ Despite this, Canada does not provide prisoners, a disproportionate number of whom are Black, with equivalent access to drug treatment services, including key harm reduction measures, violating their rights to health, security of the person, equality and non-discrimination.

For example, in spite of the overwhelming evidence of the health benefits of opioid agonist therapy (OAT) and WHO guidelines that state OAT should be available to people in prison and equivalent to community treatment options,³² federal and provincial prisoners in Canada continue to experience barriers to OAT, including long waitlists and inappropriate medication terminations.³³ The Correctional Investigator of Canada has [criticized the federal correctional service's failure to provide adequate drug treatment](#), programs and staff at a time when Canada is experiencing an unprecedented overdose crisis.³⁴ Moreover, a number of provincial and territorial prisons still do not offer OAT to prisoners or impose severe restrictions on access,³⁵ resulting in acute withdrawal among prisoners and an increased risk of use, relapse and overdose.³⁶

²⁸ D. Zakaria et al., *Summary of emerging findings from the 2007 National Inmate Infectious Diseases and Risk-Behaviours Survey*, Correctional Service of Canada, 2010.

²⁹ E. van der Meulen, "It Goes on Everywhere": Injection Drug Use in Canadian Federal Prisons," *Substance Use & Misuse* 52, 7 (2017): pp. 884–891; D. Zakaria et al.; C. Hankins, "Confronting HIV infection in prisons," *Canadian Medical Association Journal* 151,6 (1994): pp. 743–745; C.A. Hankins et al., "HIV infection among women in prison: an assessment of risk factors using a non-nominal methodology," *American Journal of Public Health* 84,10 (1994): pp. 1637–1640.

³⁰ M.W. Tyndall et al., "Intensive injection cocaine use as the primary risk factor in the Vancouver HIV-1 epidemic," *AIDS* 17,6 (2003): pp. 887–893; H. Hagan, "The relevance of attributable risk measures to HIV prevention planning," *AIDS* 17,6 (2003): pp. 911–913.

³¹ F. Kouyoumdjian et al., "Health status of prisoners in Canada," *Canadian Family Physician* 62 (2016): pp. 215–222.

³² WHO, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence*, 2009.

³³ F. Kouyoumdjian et al., "Physician prescribing of opioid agonist treatments in provincial correctional facilities in Ontario, Canada: A survey," *PLoS One* 2018; 13(2): e0192431 and West Coast Prison Justice Society, "Representative human rights complaint against Correctional Service Canada (CSC) on behalf of federal prisoners with opioid use disorder," June 4, 2018.

³⁴ C. Bains, "Prisons fail to provide adequate addiction treatment: ombudsman," *Canadian Press*, March 20, 2019.

³⁵ Canadian HIV/AIDS Legal Network and PASAN, *Hard Time: HIV and Hepatitis C Prevention Programming for Prisoners in Canada*, 2007.

³⁶ C. Bodkin, M. Bonn and S. Wildman, "Fuelling a crisis: Lack of treatment for opioid use in Canada's prisons and jails," *The Conversation*, March 4, 2020.

Similarly, access to sterile injection equipment in prison is extraordinarily limited. While acknowledging the health benefits of needle and syringe programs in prison with the introduction by Correctional Service Canada of a “Prison Needle Exchange Program” (PNEP) in some federal prisons beginning in June 2018, details of the PNEP reveal serious deficiencies that are not in keeping with public health principles or professionally accepted standards for such programs. Most fundamentally, the PNEP violates prisoners’ confidentiality at many points without reasonable justification, and participation is contingent on the approval of both prison health staff and security staff.³⁷

As the Correctional Investigator of Canada has observed, “Too much of what should be an exclusively health and harm reduction program has been shaped by security concerns,” leading merely a handful of individuals to enrol in the program.³⁸ To date, only 11 out of 43 federal prisons have a PNEP and no provincial or territorial prison system in Canada offers this program. The Correctional Investigator consequently recommended that Correctional Service Canada “revisit” the program and participation criteria with the aim of “building confidence and trust, and look to international examples in how to modify the program to enhance participation and effectiveness.”³⁹

As the [UN Standard Minimum Rules for the Treatment of Prisoners](#) (Nelson Mandela Rules) recommend, prisoners must enjoy the same standards of health care that are available in the community,⁴⁰ including key interventions recommended by the UN Office on Drugs and Crime, UNAIDS and the WHO and numerous other UN entities, such as needle and syringe programs and drug-dependence treatment including OAT.⁴¹ The [International Guidelines on Human Rights and Drug Policy](#) also call on States to “Ensure that all persons deprived of their liberty have access to voluntary and evidence-based health services, including harm reduction and drug treatment services, as well as essential medicines, including HIV and hepatitis C services, at a standard that is equivalent to that in the community.” In addition, incarcerated women should have access to gender-specific health care that is at least equivalent to that available in the

³⁷ Canadian HIV/AIDS Legal Network, *The Correctional Service of Canada’s Prison Needle Exchange Program: Policy Brief*, 2019.

³⁸ *Annual report of the Office of the Correctional Investigator, 2018-2019*, supra.

³⁹ Ibid.

⁴⁰ Rule 24 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, UN Doc. A/RES/70/175, December 17, 2015.

⁴¹ UNODC, ILO, UNDP, WHO and UNAIDS, *Policy brief: HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2013; Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights, Consolidated Version*, U.N. Doc. HR/PUB/06/9, 2006, Guideline 4, para. 21(e); UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. A/HRC/10/44, January 14, 2009, para. 74; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN Doc. A/HRC/22/53, February 1, 2013;

community;⁴² the UN Committee on the Elimination of Discrimination Against Women has affirmed that this includes prison-based needle and syringe programs and OAT.⁴³

Underrepresentation of Black people in leadership positions in cannabis industry

In October 2018, Canada legalized the possession, production and sale (i.e., trafficking), of cannabis within certain parameters, while also imposing criminal penalties for any activities outside these parameters.⁴⁴ While this historic development was heralded by some as an opportunity to rectify the racial injustices experienced under prohibition, research from the CDPE and University of Toronto has shown that [Black people \(and Indigenous people and women\) are underrepresented in leadership positions in the Canadian cannabis industry](#), when compared to their representation in the general population. Conversely, white men are overrepresented.⁴⁵

III. Recommendations

Repressive drug policy, and particularly the criminalization of people who use drugs, has resulted in profound harms, including towards people in detention. This has had a particularly disproportionate impact on Black communities in Canada, who continue to be over-policed and over-incarcerated for drug offences, yet are denied opportunities to meaningfully benefit from Canada's legalized cannabis industry.

To address these harms and human rights violations of people who use drugs, the HIV Legal Network and the CDPE urge the UN High Commission on Human Rights to make the following recommendations to governments and law enforcement agencies in its report on systemic racism and violations of international human rights law against Africans and people of African descent by law enforcement agencies:

- Immediately prohibit all forms of racial profiling by law enforcement, including by investigating and disciplining officers who engage in this practice and ensuring investigations and discipline for racial bias.
- Mandate the collection and timely publication of race- and gender- disaggregated information in all law enforcement encounters, in a manner that protects the identity of detained individuals and is open to public scrutiny. As the *International Guidelines on Human Rights and Drug Policy* recommend, preventing, identifying

⁴² Rule 10 of *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, UN Doc. A/RES/65/229, March 16, 2011 and UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016, para. 49.

⁴³ UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Canada*, November 2016, para. 49.

⁴⁴ *Cannabis Act*, (S.C. 2018, c. 16).

⁴⁵ Centre on Drug Policy Evaluation and University of Toronto, *How Diverse is Canada's Legal Cannabis Industry? Examining Race and Gender of its Executives and Directors*, 2020.

and remedying unjust discrimination in drug laws, policies and practices on any prohibited grounds requires States to “[m]onitor the impact of drug laws, policies, and practices on various communities – including on the basis of race, ethnicity, sexual orientation, gender identity, economic status, and involvement in sex work – and collect disaggregated data for this purpose.”

- Decriminalize the possession of all drugs for personal use and reject any administrative sanctions as an alternative to criminal sanctions, including fines, mandatory referrals to treatment or the confiscation of substances, which would authorize law enforcement to continue to surveil and police people who use drugs – a practice that will have a disproportionate impact on Black and other marginalized communities.
- Expand evidence-based programs to prevent and reduce the harms of repressive drug policies, including treatment for drug dependence and [safe supply measures](#) (i.e., safe alternative sources of drugs to the contaminated, unregulated drug supply),⁴⁶ and examine appropriate models for the legalization and regulation of other currently criminalized substances, to protect and promote the health of people who use drugs.
- Ensure and support the full involvement of civil society organizations, including organizations and networks of people who use drugs and Black and other marginalized communities, in the elaboration, implementation and evaluation of drug policy and services for people who use drugs. This is in line with the recommendation of the *International Guidelines on Human Rights and Drug Policy* to States to “[a]dopt and implement legislative and other measures, including institutional arrangements and mechanisms, to facilitate the participation of affected individuals and groups in the design, implementation, and assessment of drug laws, policies, and practices” as an integral element of the human right to meaningful participation in public life.
- Implement key health and harm reduction measures in all prisons in Canada, including prison-based needle and syringe programs, opioid agonist therapy and naloxone, in consultation with prisoner groups and community health organizations to ensure accessibility and operational success, taking into account the need for culturally appropriate and gender-specific programs.
- Adopt social equity programs that provide targeted avenues of entry into the cannabis industry, as well as related business and financial support, for Black people and other members of underrepresented groups.

⁴⁶ Canadian Association of People who Use Drugs, *Safe Supply Concept Document*, February 2019.