



# **The decriminalisation of people who use drugs: Evidence for a critical societal enabler to end AIDS**

**Submission to the UN High Commissioner for Human Rights**

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## Introduction

1. The International Drug Policy Consortium, Harm Reduction International, the Centre on Drug Policy Evaluation, and Instituto RIA welcome the opportunity to provide input to the High Commissioner for Human Rights ahead of her report on societal enablers and HIV/AIDS, which will be presented to the Human Rights Council in its 50<sup>th</sup> session.
2. The aim of this submission is to gather evidence on how the criminalisation of people who use drugs acts as a major impediment to the realisation of the right to health – with particular attention to HIV/AIDS – and drives a broad range of human rights violations for people living with or at risk of contracting HIV/AIDS.
3. This submission urges the High Commissioner to recommend that States adopt the gold standard for the decriminalisation of people who use drugs (that is, the removal of all penalties for drug use and ancillary activities), as a critical societal enabler to end HIV/AIDS. Decriminalisation should be coupled with increased investment in and provision of harm reduction services; a separate submission, led by Harm Reduction International and joined by many of the organisations behind this submission, will seek to provide input on that aspect.

## Criminalisation as a driver of the HIV/AIDS epidemic

4. For years, UN bodies and Member States<sup>1</sup> have recognised that people who use drugs – in particular people who inject drugs – are a key population at high risk of HIV infection, and that they are subject to heightened stigma and discrimination. According to data released by UNAIDS in 2021<sup>2</sup>, people who inject drugs are 35 times more likely to contract HIV than people who do not inject drugs. 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>3</sup>, and to 43% in Eastern Europe and Central Asia<sup>4</sup>.
5. Alarming, HIV infection rates amongst people who inject drugs have increased in recent years. According to UNAIDS<sup>5</sup>, while HIV infections declined globally by 25% between 2010 and 2017, HIV infections among people who inject drugs rose in the same period across the world. In Eastern Europe and Central Asia, this has driven an overall 43% increase in HIV infections from 2010 to 2020, with a tragic 32% increase in AIDS-related deaths<sup>6</sup>.
6. Evidence shows that punitive laws and policies, including the criminalisation of people who use drugs<sup>7</sup>, are key contributors to this negative trend. This is acknowledged in the 2021 Political Declaration on Ending AIDS<sup>8</sup> and the UNAIDS Global AIDS Strategy for 2021-2025<sup>9</sup>.
7. A global analysis published in 2021 by Georgetown University showed that the criminalisation of drug use or possession for personal use was associated with 14% lower rates of both people who knew their HIV status and people who had suppressed their HIV viral charge<sup>10</sup>. This finding confirms the results of several smaller-scale studies. For instance, a survey of 624 female sex workers who inject drugs in Mexico found that syringe confiscation was associated with higher levels of HIV infections<sup>11</sup>. A 2021 survey of 731 women who inject drugs in Indonesia found that being exposed to policing and arrest was linked with a 29.6% reduction in past-month access to a needle and syringe programme, while going to prison for a drug offence increased the likelihood of interrupting antiretroviral treatment by 42.3%<sup>12</sup>.
8. The criminalisation of people who use drugs, as well as punitive policing practices such as the surveillance of open-air drug use locations, the harassment of people outside harm reduction centres, the confiscation of drug use equipment, and stop and search of people suspected of using drugs, create important barriers to accessing critical health and harm reduction interventions<sup>13</sup>, as people who are

criminalised shun away from medical and harm reduction services out of fear of arrest, punishment or stigma. As a result, people who inject drugs are more likely to share injecting equipment and to engage in riskier injection practices, thus exposing themselves to higher risks of infection of blood-borne diseases<sup>14</sup> and overdose.

## Impact of criminalisation on the human rights of people who use drugs

9. Criminalisation has devastating consequences on the human rights of people who use drugs, particularly those facing intersecting forms of criminalisation and/or marginalisation.
10. **Right to liberty.** The UN Working Group on Arbitrary Detention has established that detention is not an appropriate response to drug use, and that the involuntary detention of people who use drugs can constitute arbitrary detention<sup>15</sup>. However, according to UNODC estimates for 2017, 470,000 people were incarcerated for drug possession for personal use as the principal offence – representing approximately 4% of the total prison population<sup>16</sup>, and hundreds of thousands more are subject to administrative detention, often under the guise of “treatment”<sup>17</sup>. It is estimated that between 56% to 90% of people who inject drugs will be incarcerated at some stage in their lives<sup>18</sup>. Evidence also shows that the levels of drug dependence, HIV, tuberculosis and hepatitis C are significantly higher in prisons than in the community<sup>19</sup>.
11. **Right to health.** As noted above, the criminalisation of people who use drugs has severe impacts on their health and well-being. Fear of interaction with law enforcement, punishment and stigma drives people who use drugs away from life-saving harm reduction, drug treatment and other healthcare services, increasing their vulnerability to blood-borne diseases such as HIV, and to overdoses. At the same time, the criminalisation of possession of drug use paraphernalia such as sterile needles and syringes and crack pipes has undermined efforts to curb HIV and hepatitis epidemics.<sup>20</sup> Beyond HIV-specific outcomes, a history of arrests and police violence is associated with worse mental health outcomes<sup>21,22</sup>. Women and LBGTQI+ people who use drugs are particularly vulnerable to HIV infections as they face heightened obstacles in accessing harm reduction 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>23</sup>
12. **Right to privacy.** The implementation of criminalising laws is often paired with surveillance policies that impinge on the right to privacy of people who use drugs. For instance, in several countries – including at least 14 Asian states<sup>24</sup> – law enforcement can obligate people suspected of drug use to undergo mandatory urine testing, an invasive practice that does not provide reliable evidence of drug use, and is simply inadequate to assess drug dependence<sup>25</sup>. Additionally, some states – including at least 9 Asian countries<sup>26</sup> – require the compulsory registration of people who use drugs in public state records.
13. **Economic and social rights.** The stigma and discrimination derived from criminalisation can limit the access of people who use drugs to basic social services such as housing, education, or benefits. In a 2021 survey<sup>27</sup> amongst members of the IDPC network that gathered responses from 26 countries, stigma was reported to be a barrier to accessing health care in 88% of these countries; as a barrier to maternity care in 65% of the 26 countries; and as a barrier to public housing in a 73% of them. In many countries, stigma was also perceived to hamper access to public education and to benefits.
14. **Right to be free from discrimination.** The deployment of laws that criminalise and punish people who use drugs has been discriminatory, targeting people who experience intersecting forms of marginalisation on the basis of their race, ethnicity, gender identity or sexual orientation, and socio-economic status<sup>28</sup>. For instance, in the UK Black and Asian people are convicted of cannabis possession

at 11.8 and 2.4 times the rate of white people, despite lower rates of self-reported cannabis use.<sup>29</sup> A 2018 study from the USA reported that although black people comprise 13% of the US population and use drugs at similar rates to people of other races, they comprise 29% of those arrested for drug offences and represent nearly 40% of those incarcerated in state or federal prison for drug law violations.<sup>30</sup> Data from the Global Drug Policy Index<sup>31</sup>, which assesses the performance of drug policies in 30 countries, shows that criminal justice responses to drugs disproportionately impact low-income groups in all surveyed countries, while several countries report a high disproportionate impact on ethnic minorities. Finally, the Index shows that women are disproportionately impacted by the criminal justice response in drug control efforts, especially in Latin American countries.

## The broad consensus for decriminalisation as a critical societal enabler

15. In recent decades, over 50 jurisdictions and more than 30 countries<sup>32</sup> have adopted some form of decriminalisation for drug use and related activities. The overarching objective of decriminalisation is to end the punishment and stigmatisation of people who use (or are suspected of using) drugs. Crucially, when implemented under a harm reduction-oriented approach, decriminalisation can provide 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>
16. In practice, each country designs and implements decriminalisation differently – and they often fall short from the gold standard, which consists in the removal of all sanctions and punishment<sup>34</sup>. In countries like Portugal, decriminalisation has been a consolidated part of the legal system for decades, and it has been effective in reducing drug-related deaths, HIV prevalence, and the number of people sentenced for drug offences, while drug use has remained comparable to that of other EU countries<sup>35</sup>. However, in countries like Russia<sup>36</sup>, the maximum quantities of drugs allowed for personal use are so low that people who use drugs are frequently presumed to be trafficking. Other countries impose administrative sanctions, from fines to administrative detention. Whether severe or mild in nature, any administrative sanction can have a detrimental impact on people's lives (e.g., a fine of any sort could be particularly harmful to a homeless person who uses drugs), and should therefore be discouraged. If effectively designed and implemented, decriminalisation can be a powerful instrument to ensure that the rights of people who use drugs are respected, protected, and fulfilled.
17. The International Narcotics Control Board, the UN body of experts that monitors the implementation of the international drug conventions, has stated<sup>37</sup> that the UN drug treaties do not require the punishment of drug use or possession for personal use; instead, they allow for States' response to be centred on the provision of health and social services.
18. A growing number of UN entities and human rights experts are supporting and promoting decriminalisation as a core component of a rights and health approach towards people who use drugs:
  - **UN Agencies.** The UN system Common Position on drugs, the UN overarching policy document on drug-related matters adopted by all 31 UN agencies, promotes decriminalisation amongst its directions for action<sup>38</sup>. Various UN agencies have also explicitly called for decriminalisation, including OHCHR<sup>39</sup>, UNAIDS<sup>40</sup>, WHO<sup>41</sup>, UNDP<sup>42</sup>, and UN Women<sup>43</sup>.
  - **International standards.** According to the 2019 International Guidelines on Human Rights and Drug Policy, which were developed by a coalition of human rights experts, Member States, WHO, UNAIDS, UNDP, and OHCHR, 'States shall ensure that people are not detained solely on the basis of drug use or drug dependence'<sup>44</sup>.

- **Human rights bodies and experts.** Amongst many others, the CESCR Committee has explicitly recommended decriminalisation<sup>45</sup>, as did the Working Group on Arbitrary Detention<sup>46</sup>. The High Commissioner for Human Rights<sup>47</sup>, and the Special Rapporteur on Health<sup>48</sup> have also recommended that states consider decriminalisation as a mechanism to remove obstacles to the right to health.

## The gold standard of decriminalisation

19. The gold standard of decriminalisation<sup>49</sup> is the removal of all sanctions and punishments for drug use and ancillary activities such as drug possession for personal use, the cultivation and purchase of drugs for personal use; and possession of drug use paraphernalia<sup>50</sup>. Decriminalisation should be coupled with the provision of voluntary, evidence-based, and affordable healthcare, harm reduction and drug treatment services (on harm reduction services, see separate submission on harm reduction led by Harm Reduction International). Decriminalisation policies should be designed and implemented with the full and meaningful participation of people who use drugs.
20. In her report, we call on the High Commissioner to make an unequivocal call for all member states to decriminalise drug use and related activities, with the removal of all sanctions for such activities, 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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## ENDNOTES

<sup>1</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/2021\\_political-declaration-on-hiv-and-aids\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2021_political-declaration-on-hiv-and-aids_en.pdf), para. 25.

<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. 11.

<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. 310.

<sup>4</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>5</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/JC2954\\_UNAIDS\\_drugs\\_report\\_2019\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf), pp. 2-3.

<sup>6</sup> For both data 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>7</sup> By ‘criminalisation of people who use drugs’ we mean the imposition of criminal penalties for the use of illegal drugs, as well as for a series of activities ancillary to such personal use, including the possession of drugs for personal use, the possession of drug use equipment, or the cultivation of cannabis for personal use.

<sup>8</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/2021\\_political-declaration-on-hiv-and-aids\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2021_political-declaration-on-hiv-and-aids_en.pdf), para. 37.

<sup>9</sup> See: <https://www.unaids.org/en/resources/documents/2021/2021-2026-global-AIDS-strategy>

<sup>10</sup> See: <https://gh.bmj.com/content/6/8/e006315>

<sup>11</sup> See: <https://link.springer.com/article/10.1007/s11524-012-9741-3>

<sup>12</sup> Research to be published by IDPC in March 2022. Available upon request.

<sup>13</sup> See: [https://www.unaids.org/sites/default/files/media\\_asset/JC2954\\_UNAIDS\\_drugs\\_report\\_2019\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf), p. 5.

<sup>14</sup> See: <https://www.sciencedirect.com/science/article/pii/S0955395914002631#bib0255>

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- <sup>15</sup> See: <https://undocs.org/A/HRC/47/40>, para. 84 amongst others.
- <sup>16</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.
- <sup>17</sup> See: <https://unaidsapnew.files.wordpress.com/2022/01/booklet-1-12th-jan-2022.pdf>
- <sup>18</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>19</sup> See: [https://www.unodc.org/docs/treatment/111\\_PRISON.pdf](https://www.unodc.org/docs/treatment/111_PRISON.pdf), p. 11.
- <sup>20</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>21</sup> Research to be published by IDPC in March 2022. Available upon request.
- <sup>22</sup> See: <http://idpc.net/publications/2016/03/public-health-approach-to-drug-use-in-asia-decriminalisation>
- <sup>23</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>24</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>25</sup> See: <https://drive.google.com/file/d/1DBGu24ggfDEzv57QEeSf1YZ8ZYvnuwC/view>
- <sup>26</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>27</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>28</sup> See: <https://undocs.org/A/HRC/47/40>, para. 51.
- <sup>29</sup> See: <https://www.release.org.uk/sites/default/files/pdf/publications/HRI%20and%20Release%20-%20Contribution%20to%20the%20OHCHR%20Report.pdf>; <https://www.release.org.uk/publications/numbers-black-and-white-ethnic-disparities-policing-and-prosecution-drug-offences>
- <sup>30</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>31</sup> See: <https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report%20EN.pdf>, pp. 41 to 46.
- <sup>32</sup> For the full list, 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> See: <https://transformdrugs.org/assets/files/PDFs/Drug-decriminalisation-in-Portugal-setting-the-record-straight.pdf>
- <sup>36</sup> See Russia section in: <https://www.talkingdrugs.org/drug-decriminalisation>
- <sup>37</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>38</sup> See: <https://unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy>
- <sup>39</sup> See: <https://www.ohchr.org/EN/NewsEvents/Pages/Drug-policy.aspx>
- <sup>40</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>41</sup> See: <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>

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<sup>42</sup> See: <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

<sup>43</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>44</sup> See: <https://www.undp.org/publications/international-guidelines-human-rights-and-drug-policy>, p. 13.

<sup>45</sup> See: [E/C.12/NOR/CO/6](https://www.unhcr.org/refugees/42/39/ADD.1), p. 43.

<sup>46</sup> See: A/HRC/42/39/ADD.1

<sup>47</sup> See: A/HRC/30/65.

<sup>48</sup> See: A/65/255.

<sup>49</sup> For more, see: <https://inpud.net/drug-decriminalisation-progress-or-political-red-herring/>

<sup>50</sup> See: [http://fileserv.idpc.net/library/IDPC-drug-policy-guide\\_3-edition\\_FINAL.pdf](http://fileserv.idpc.net/library/IDPC-drug-policy-guide_3-edition_FINAL.pdf), p. 31.