



Submission to the United Nations Committee on the Elimination of Racial Discrimination

Comments to draft General Recommendation N. 37 on racial discrimination in the enjoyment of the right to health

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Submitting organisations & contacts:

International Drug Policy Consortium

The International Drug Policy Consortium (IDPC) is a global network of over 190 NGOs that come together to promote person-centred and rights-affirming drug policies.

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Amnesty International is a global movement of more than 10 million people who campaign for a world where human rights are enjoyed by all.

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The Centre on Drug Policy Evaluation (CDPE) in Canada strives to improve community health and safety by conducting research and outreach on best practices in drug policy

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The Center for Legal and Social Studies is an Argentine human rights organization founded in that promotes the protection of human rights and their effective exercise, justice and social inclusion – both nationally and internationally.

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**Drug Policy
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Introduction

1. The submitting organisations welcome the opportunity to provide comments on the first draft of General Recommendation N. 37 on racial discrimination in the enjoyment of the right to health.
2. Drug policy is a central element of public health. In the words of the UN special rapporteur on the right to health, access to harm reduction and other evidence-based health responses to drug use is ‘essential for the protection of the right to health of people who use drugs.’¹ Drug policies have been justified for decades as a means to protect ‘the health and welfare’ of humankind.² However, there is now undeniable evidence that the enforcement of punitive drug laws and policies has been a tool of racial discrimination in the criminal legal system, and that this has had a discriminatory impact on the enjoyment of physical and mental health of people of African descent, Indigenous peoples, and other ethnic minorities.
3. This submission provides evidence of the role of drug laws and policies as a driver of discriminatory policing and incarceration, and of how this leads to the violation of the right to be free from racial discrimination in the enjoyment of the right to health. **We urge the Committee to recognise explicitly in the General Recommendation that contact with the criminal legal system is a social determinant of health, and that States have the obligation to reform criminal laws, policies, and practices with racially discriminatory outcomes - including drug-related laws, policies, and practices.**

Evidence on the discriminatory impact of drug laws

4. Overwhelming evidence shows that people of African descent, Indigenous people, and other racial and ethnic minorities are disproportionately targeted in all phases of the enforcement of drug laws and policies, from stops and searches to arrests, prosecutions, or incarceration.
 - a. In 2016-17, Black and Asian people in **England and Wales** were convicted of cannabis possession at 11.8 and 2.4 times the rate of white people, despite lower rates of self-reported use.³ According to Government data, there were 526,024 stop and searches between April 2021 and March 2022,⁴ 65% of which were for suspicion of carrying drugs. Those identifying as Black were searched at 6 times the rate of white people, whilst Asian people were searched at a rate 2.1 times higher than white people.⁵ According to a study conducted in London between July and September 2020,⁶ Black men aged 18-24 were 19 times more likely to be stopped and searched than the general population.⁷ This was not related to Covid-19 policing but to increases in the use of police searches which were mainly for drugs. The vast majority of these searches result in no drugs being found. Handcuffs are used routinely to detain people for searches.⁸
 - b. In the **United States (US)**, data show that although levels of drug use are similar across people of different ethnicities, Black people comprised ‘12% of the US adult population but more than

¹ See:

<https://www.ohchr.org/en/statements/2020/04/statement-un-expert-right-health-protection-people-who-use-drugs-during-covid-19>

² See: 1961 Single Convention on Drugs, preamble.

³ See: <https://www.release.org.uk/sites/default/files/pdf/publications/The%20Colour%20of%20Injustice.pdf>

⁴ See official data: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2022>

⁵ See: <https://www.gov.uk/government/statistics/update-to-stop-and-search-and-arrests-statistics-using-2021-census-estimates/update-to-stop-and-search-and-arrests-statistics-using-2021-census-estimates>

⁶ See: <https://discovery.ucl.ac.uk/id/eprint/10115766/1/2020-Q3.pdf>

⁷ Ibid.

⁸ See: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

twice that share of adult drug arrests in 2019.⁹ Additionally, Black people made up 36% of the prison population for drug convictions in 2019, which was ‘three times their share of the general population.’¹⁰

- c. In **Brazil**, data published in 2019 shows that 64% of all people incarcerated were Black, while 26% of men in prison and 62% of women in prison were incarcerated for a drug offence. Most people deprived of liberty were carrying a small quantity of drugs, from 10 to 15 grams.¹¹
 - d. A study on all minor possession of cannabis arrests in five cities in **Canada** in 2015 found similar results.¹² In Vancouver, Indigenous people make up just 2.5% of the population, yet accounted for 15.6% of those arrested for cannabis possession. In Ottawa, Indigenous people were arrested at a rate of 20.8 per 10,000, Black people at a rate of 26.7 per 10,000, and white people at a rate of 5.4 per 10,000.
 - e. The **Global Drug Policy Index**, which assesses the implementation of drug policy in 30 countries against the standards set in the UN system Common Position on drugs, found ethnic disparities in the implementation of criminal legal responses to drugs in 27 out of the 30 countries surveyed. In 6 of these countries – Brazil, Canada, Mexico, Nepal, South Africa, and the United Kingdom (UK) – the disparities were found ‘to a very large extent.’¹³
 - f. In **Argentina**, the persecution of drug possession for personal use is used by police forces as a tool for alleged drug trafficking control. However, it is executed as a practice of excessive and abusive control over specific populations.¹⁴ Extortions, threats, and arbitrary detentions are some of the forms of irregular police interventions that are initiated on the basis of possession for personal use. These practices almost exclusively target young Brown men from poor neighbourhoods. In Buenos Aires in 2022, 66% of the criminal cases of drug law violations were originated by police arrests of people using drugs in public spaces. 75% of these arrests took place in the poorest neighbourhoods of the city.¹⁵
5. People of colour and ethnic minorities are searched, arrested, and incarcerated mostly for minor drug offences such as drug possession and personal use. In the UK, the discriminatory practice of stop-and-search is carried out ‘on reasonable grounds’ of simply ‘carrying’ a drug, which has no relation to any trafficking activity.¹⁶ In the US, the leading cause of arrests are drug charges, which comprise over 1.5 million arrests per year;¹⁷ data between 2008–2018 consistently show that possession of drugs comprise over 80% of drug arrests.¹⁸ In the European Union, out of the 1.5 million drug offences reported in 2021, 64% of them concerned possession of drugs rather than trafficking.¹⁹ In 2002, the UN also estimated that out of the 3.1 million people arrested for a drug-related activity, 61% were arrested for mere drug use.²⁰
6. The higher rates of searches, arrests, or incarceration for possession of drugs are not justified by a higher prevalence of drug use amongst communities of colour; rather they reflect law enforcement’s greater

⁹ Drug Arrests Stayed High Even as Imprisonment Fell From 2009 to 2019, found at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019>

¹⁰ Drug Arrests Stayed High Even as Imprisonment Fell From 2009 to 2019, found at:

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019>

¹¹ See: <https://pbpd.org.br/publicacao/guia-de-bolso-para-debates-sobre-politica-de-drogas/>, p. 55

¹² See: <https://www.sciencedirect.com/science/article/abs/pii/S0955395920302760>

¹³ See indicator 13 of GDPI raw database. Available at: <https://globaldrugpolicyindex.net/resources>

¹⁴ Article 14, paragraph 2 of Law 23.737 criminalizes the possession of narcotics for personal use.

¹⁵ Source: Information obtained from a request for information to the Public Prosecutor's Office of the City of Buenos Aires.

¹⁶ See: <https://www.gov.uk/police-powers-to-stop-and-search-your-rights>

¹⁷ See: <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/persons-arrested>

¹⁸ See: <https://www.nytimes.com/2019/11/05/upshot/is-the-war-on-drugs-over-arrest-statistics-say-no.html>

¹⁹ See: https://www.emcdda.europa.eu/publications/edr/trends-developments/2022_en, p. 24.

²⁰ See: https://wdr.unodc.org/wdr2020/field/WDR20_BOOKLET_1.pdf, p. 21.

focus and greater use of violence and force in urban areas, lower-income communities, and communities of colour.²¹ In the US, the 2021 National Survey on Drug Use and Health found similar rates of illegal drug use amongst Black (24.3%) and white (22.5%) people.²² More generally, the UN Office on Drugs and Crime has noted that ‘the wealthier sectors of society have a higher prevalence of drug use.’²³

7. In her 2021 report presenting an agenda towards transformative change for racial justice and equality, High Commissioner for Human Rights Michelle Bachelet stated that ‘*the discriminatory application of criminal law must be tackled at every stage, including by reforming drug-related policies, laws and practices with discriminatory outcomes, in line with international human rights standards.*’²⁴

Contact with the criminal legal system as a social determinant of health

8. Evidence shows that contact with the criminal legal system is a critical social determinant of physical and mental health. While most research has been done on the consequences of incarceration, a growing body of evidence shows that this happens in every form of contact with the criminal legal system, and that encounters with the police and arrests have negative impacts on mental health and well-being.^{25, 26}
9. There is also abundant evidence on the specific health harms of criminalising drug use and possession for personal use. A literature review focusing on nine countries (Canada, China, India, Malaysia, Mexico, Russia, Thailand, Ukraine, and the US)²⁷ found that policing is associated with higher risks of HIV infection among people who inject drugs and with higher HIV risk behaviours, including avoidance of harm reduction services. 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.²⁸ A 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 needle and syringe programmes.²⁹
10. The role of criminalisation as a barrier to accessing life-saving harm reduction services, including opioid antagonists such as naloxone that can reverse overdoses, is particularly concerning in the context of the opioid overdose crisis that is now unfolding in North America. By 2020, Black and Native American people had already overtaken white people as the two ethnicities with the highest rate of overdose deaths.³⁰ Discriminatory policing over these populations is likely to only exacerbate this dynamic, and to hinder access to life-saving harm reduction services when they are critically needed.
11. The criminalisation of drug use and possession for personal use is also a driver of other harmful policies that can impact the health of racial and ethnic minorities, for instance by restricting access to housing. In the United Kingdom, social housing will often contain policies that restrict illegal activities leading to eviction if people use drugs in their homes. The Anti-social Behaviour, Crime and Policing Act 2014³¹ allows for the closure of premises, including residential housing, where there is “nuisance behaviour”. These orders can last from 3 to 6 months and require the tenant to leave the property and find somewhere else to live, returning to the property is a criminal offence, during this period their landlord will often seek

²¹ See: <https://drugpolicy.org/issues/race-and-drug-war>

²² See: <https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFRHighlightsRE123022.pdf>

²³ See: https://wdr.unodc.org/wdr2020/field/WDR20_BOOKLET_1.pdf, p. 10.

²⁴ Ibid, para. 42.

²⁵ See: <https://journals.sagepub.com/doi/10.1177/0003122417713188>

²⁶ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6987921/>

²⁷ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7879596/>

²⁸ See: <https://gh.bmj.com/content/6/8/e006315>

²⁹ See: <https://idpc.net/publications/2022/06/women-who-use-drugs-in-indonesia-the-harmful-impacts-of-drug-control> ³⁰ See:

<https://www.cdc.gov/media/releases/2022/s0719-overdose-rates-vs.html>

³⁰ See: <https://www.cdc.gov/media/releases/2022/s0719-overdose-rates-vs.html>

³¹ See: <https://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

possession orders with the aim of evicting the resident. “Nuisance behaviour” includes drug use and these powers originated from 2001 legislation (now repealed) which allowed for closure orders only in respect of Class A drug use, often referred to as the “crack house closure order”.³² The 2014 Act also allows for the mandatory eviction of “any tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence”, a serious offence includes drug supply.³³ In the United States, public housing authorities are also allowed to terminate leases in cases of ‘drug-related criminal activity’, which includes drug use and possession for personal use.³⁴

12. The UN system Common Position on drugs, the UN overarching policy document on drug-related matters adopted by all 31 UN agencies, commits the UN system to promote decriminalisation.³⁵ Various UN agencies, treaty bodies, and special mandates have also explicitly called for decriminalisation, including OHCHR,³⁶ UNAIDS,³⁷ WHO,³⁸ UNDP,³⁹ UN Women,⁴⁰ the High Commissioner for Human Rights,⁴¹ the UN Committee on Economic, Social, and Cultural Rights,⁴² the Working Group on Arbitrary Detention,⁴³ and the Special Rapporteur on Health.⁴⁴
13. Punitive drug laws and policies are also major drivers of non-consensual medical treatment. Within the criminal legal system, non-consensual drug treatment can take place in the form of compulsory drug detention,⁴⁵ mandatory treatment by judicial order, or drug courts and other forms of coerced treatment in which people who use drugs are forced to choose between incarceration and treatment. These systems of coercion often compel people to undergo drug treatment that is not necessary, is not based on scientific evidence, and is not tailored to their specific needs. In 2021, the UN Working Group on Arbitrary Detention found that mandatory or coerced drug treatment is contrary to human rights standards, stating that: *‘Drug treatment should always be voluntary, based on informed consent, and left exclusively to health professionals. There should be no court supervision or monitoring of the process, which should rest exclusively with trained medical professionals.’*⁴⁶

Access to harm reduction services⁴⁷

14. As described in a prior submission,⁴⁸ racial discrimination and structural inequalities have hindered access to harm reduction services for Black, Brown, and Indigenous people who use drugs; including on access to opioid agonist therapy, needle and syringe programmes, and viral hepatitis treatment.
 - a. In United States, there is a racial divide when it comes to who has access to which treatment, with methadone being more available in strictly Black and Brown communities, while buprenorphine is more readily available in communities of white people.

³² See:

<https://www.legislation.gov.uk/ukpga/2014/12/notes/annex/2#:~:text=The%20E2%80%9Ccrack%20house%20closure%20order%E2%80%9D&text=The%20test%20is%20that%20there,a%20maximum%20of%20six%20months>

³³ See: <https://www.legislation.gov.uk/ukpga/2014/12/part/5/crossheading/absolute-ground-for-possession-secure-tenancies/enacted>

³⁴ For more information, see: <https://uprootingthedrugwar.org/housing/>

³⁵ See: <https://unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy>

³⁶ See: <https://www.ohchr.org/EN/NewsEvents/Pages/Drug-policy.aspx>

³⁷ See: https://www.unaids.org/sites/default/files/media_asset/global-AIDS-strategy-2021-2026_en.pdf

³⁸ See: <http://www.who.int/hiv/pub/guidelines/keypopulations/en/>

³⁹ See: <http://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

⁴⁰ See: https://www.unodc.org/documents/ungass2016/Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf

⁴¹ See: UN Doc A/HRC/30/65

⁴² See: UN Doc [E/C.12/NOR/CO/6](#), p. 43

⁴³ See: UN Doc A/HRC/42/39/ADD.1

⁴⁴ See: UN Doc A/65/255

⁴⁵ See: <https://www.unodc.org/roseap/en/2022/01/compulsory-treatment-rehabilitation-east-southeast-asia.html>

⁴⁶ See: UN Doc A/HRC/47/40, para. 83

⁴⁷ Input on this part is taken from Global State of Harm Reduction 2022, unless specify otherwise.

⁴⁸ <https://www.ohchr.org/sites/default/files/documents/hrbodies/cerd/discussions/right-health/2022-08-05/submission-racial-discrimination-and-right-to-health-cso-hri-idpc-and-cdpe.pdf>

- b. In Canada, Hepatitis C incidence is five times higher among Indigenous people, in part due to their overrepresentation in vulnerable populations such as people who inject drugs, people in detention, and those with unstable housing.
- c. Aboriginal and Torres Strait Islander people in Australia and the Māori population in New Zealand are disproportionately affected by the harms of drug use, and consistently experience worse health outcomes than other ethnic groups in the region. Māori people consistently experience barriers when accessing health services, from discriminatory behaviour and inadequate information provision to practical barriers like costs and travel challenges. Aboriginal and Torres Strait Islanders experience structural determinants of health such as higher prevalence of low household incomes, unemployment, food insecurity, poorer housing, and lower level of education compared to the non-Indigenous population, and the lack of accessibility to culturally appropriate health services is also apparent.

Conclusion: suggestions for the first draft of the General Recommendation

15. **In view of the foregoing, we respectfully suggest the incorporation of a new paragraph immediately after current para. 19, in order to recognise that contact with the criminal justice system is a social determinant of health, and its relevance to freedom from racial discrimination in the enjoyment of the right to health.** The following draft language is presented for consideration:

‘Criminal laws have been disproportionately used against racial and ethnic minorities. Contact with criminal legal systems at any stage, including stops and searches, arrests, prosecution and incarceration, is associated with worse outcomes in physical and mental health, and should be therefore considered as a social determinant of health. Involvement with the criminal legal system is also associated with violations of the right to be free from non-consensual medical treatment, including in the form of compulsory or coerced treatment imposed by ordinary judicial bodies and drug courts. Therefore, criminal laws, policies and practices that have discriminatory outcomes or that disproportionately impact people of African descent, Indigenous peoples, or other ethnic groups, including drug-related laws, policies and practices, violate freedom from racial discrimination in the enjoyment of the right to health.’

16. **We also respectfully suggest the inclusion of the following paragraph to section IV.(A), concerning recommendations on legislative and policy related matters:**

‘In order to comply with their obligations to protect people from racial discrimination in the enjoyment of the right to health, States should recognise that contact with the criminal legal system is a social determinant of health, and should move to tackle the discriminatory application of criminal law at every stage, including by prohibiting racial profiling, and reforming drug-related policies, laws and practices with discriminatory outcomes, including laws that criminalise drug use and possession for personal use. States should discontinue drug courts or other diversion programmes that coerce people into medical treatment, and ensure that any drug treatment is voluntary and safeguarded by informed consent. Furthermore, States should redirect resources from the billions spent on drug control to fund evidence-based, non-discriminative, and tailored harm reduction and other health and social services for the people impacted by drug policy.’