Submission to the Committee on the Elimination of Racial Discrimination

Issues for consideration during the thematic discussion in preparation for a General Recommendation on article 5 (e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination

Racial discrimination and the right to health

1 July 2022

Submitting Organisation(s):

Harm Reduction International (HRI) is a leading non-governmental organisation dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

The International Drug Policy Consortium (IDPC) is a global network of over 190 NGOs that come together to amplify and strengthen a diverse global movement to repair the harms caused by punitive drug policies, and promote just responses.

The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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.

The organisation works collaboratively with governments, affected communities and civil society to guide effective and evidence-based policy responses to substance use.

Introduction

HRI, IDPC, and CDPE welcome the opportunity to contribute on "issues for consideration during the thematic discussion in preparation for a General Recommendation on article 5 (e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination", particularly on the issue of racial discrimination and the right to health.

This submission focuses on the impact of drug control policies on the right to health of specific ethnic groups. The Working Group of Experts on People of African Descent concluded that drug control is a "means of racial surveillance, rather than [as] a mechanism to curb the use and sale of narcotic drugs",[1] concluding that the racial impacts of punitive drug control are a historical legacy of colonialism. Indeed, the 'colonization of drug control' has been a means for states in Europe and America to advance and sustain the systematic exploitation of people of African descent, land and resources, which were established under colonial control and continue to dominate today.

The Working Group of Experts on People of African Descent also acknowledged that the "health risks associated with unregulated use of narcotics are largely ignored where they principally impact people of African descent, including in detention settings which are high-risk environments for HIV, hepatitis C and tuberculosis transmission. There is a lack of recognition that enduring racial disparities and race-based outcomes are related to policy priorities that are grounded in discrimination and negative racial stereotypes, including the targeting of minority communities of African origin rather than criminality."[2]

Access to essential health services, including harm reduction services

Overarching structural problems negatively affect access to health and harm reduction services for Black, Brown and Indigenous people who use drugs all over the world. The criminalisation of people who use drugs has largely contributed to an increase in drug-related deaths, overdoses and sustained transnational criminal enterprises at the expense of the lives of people who use drugs, their families and greater society. The UNODC World Drug Report 2022 estimates that there were a recorded 494,000 drug use-related deaths.[3] According to the Working Group of Experts on People of African Descent, people of African descent are particularly affected because of ongoing racial disparities in access to health, harm reduction and drug treatment services, as well as the disproportionate targeting they are facing by the criminal legal system.[4]

Box 1. Support for harm reduction

Harm reduction is endorsed by the 2021 Political Declaration on HIV and AIDS[5] and the UN System Common Position on drug-related matters.[6] Actors including OHCHR, UNODC, UNAIDS, WHO and various UN Special Procedures have recognised harm reduction as highly effective, cost-effective,

[1] https://cndblog.org/2021/04/cnd-plenary-agenda-item-3-general-debate-continued-2/
[2] OHCHR, 'Fight against world drug problem must address unjust impact on people of African descent, say UN experts' (Geneva, 14 March 2019), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E.
[3] UNODC, 'World Drug Report 2022' (New York, 2022), https://www.unodc.org/res/wdr2022/MS/WDR22_Booklet_1.pdf
[4] OHCHR, 'Fight against world drug problem must address unjust impact on people of African descent, say UN experts' (Geneva, 14 March 2019), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E.
[5] Available here: https://www.unaids.org/sites/default/files/media_asset/2021_political-declaration-on-hiv-and-aids_en.pdf
[6] Available here: https://unsceb.org/sites/default/files/2021-01/2018%20Nov%20-%20UN%20system%20common%20position%20on%20drug%20policy.pdf

and a key component of the right to health for people who use drugs. Nevertheless, the provision of harm reduction interventions is critically low, with only one percent of people who inject drugs living in countries with high coverage.[7]

According to the Global Drug Policy Index, specific ethnic groups who use drugs were perceived as having experienced disparities in accessing harm reduction to a large or very large extent in 7 out of the 30 countries studied (Australia, Brazil, Canada, Ghana, Mexico, New Zealand and Thailand).[8] More generally, racism and discrimination against Indigenous, Black and Brown people result in low household incomes, unemployment, food insecurity, poor housing and lower levels of education. This, in turn, results in worse health outcomes for these communities and in people from these communities disengaging or actively avoiding health services, including ham reduction services.

In **the United Kingdom**, substantial barriers are reported to accessing drug treatment services for ethnic minority individuals. People of colour, in particular Black people, face multiple and complex disadvantages and require service provision which is both culturally and religiously sensitive, and yet, there is a lack of drug treatment options that are appropriate to their needs.[9] Significant regard must be given to how health systems more generally fail this population, and that distrust is borne out of this failure, therefore working directly with groups that have been impacted is vital.[10]

In **Canada**, hepatitis C incidence is five times higher among Indigenous people, in part due to their over-representation amongst populations in situations of vulnerability such as people who inject drugs, people in detention, and those with unstable housing. According to the latest available data in Canada, cases of active tuberculosis increased by 2.6% from 2016 to 2017.[11] TB incidence was highest among Indigenous people at 21.5 cases per 100,000, and alarmingly high among those identifying as Inuit at 205.8 cases per 100,000 (Note that no data was available on prevalence among people who use or inject drugs). Nonetheless, there is a severe lack of services tailored to the needs of Indigenous communities in the country.

Indigenous peoples in Oceania, specifically Aboriginal and Torres Strait Islander people in Australia and the Māori population in New Zealand, are disproportionately affected by drug use-related harms, and consistently experience worse health outcomes than other ethnic groups in the region.[12]

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[7] Larney S et al (2017) 'Global, regional, and country-level coverage of interventions to prevent and manage HIV and hepatitis C among people who inject drugs: a systematic review', The Lancet Global Heath 5(12), e1208–e1220. For more information, see Global State of Harm Reduction 2020. Harm Reduction International, London, UK, 2020.

[8] Nougier, M. & Cots Fernandez, A., 'The Global Drug Policy Index 2021' (London, November 2021), p. 49, https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report%20EN.pdf

[9] UKDPC, 'Drugs and Diversity: Ethnic Minority Groups', UK Drug Policy Commission (2010), https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Drugs%20and%20diversity_%20ethnic%20minority%20groups%20(policy%20briefing).pdf.

[10] For more on this issue, see Release's Written Submission to the Dame Carol Black Review (Phase 2). Available at: https://www.release.org.uk/publications/written-submission-dame-carol-black-review-0; Tracey Bignall et al., 'Racial Disparities in Mental Health: Literature and evidence review', Race Equality Foundation (2019), ' https://raceequalityfoundation.org.uk/wp- content/uploads/2020/03/mental-health-report-v5-2.pdf.

[11] Global State of Harm Reduction 2020. Harm Reduction International. London, UK, 2020

[12] Graham R, Masters-Awatere B. Experiences of Māori of Aotearoa New Zealand's public health system: a systematic review of two decades of published qualitative research. Australian and New Zealand Journal of Public Health 2020;44(3):193–200. See also: Markwick A, Ansari Z, Sullivan M, Parsons L, McNeil J. Inequalities in the social determinants of health of Aboriginal and Torres Strait Islander People: a cross-sectional population-based study in the Australian state of Victoria. International Journal for Equity in Health 2014;13(1):91; Pearson O, Schwartzkopff K, Dawson A, Hagger C, Karagi A, Davy C, et al. Aboriginal Community Controlled Health Organisations address health equity through action on the social determinants of health of Aboriginal and Torres Strait Islander peoples in Australia. [Internet]. BMC Public Health - In Review; 2020 [cited 2020 Aug 18]. Available from: https://www. researchsquare.com/article/rs-25090/v1; Zambas SI, Wright J. Impact of colonialism on Māori and Aboriginal healthcare access: a discussion paper. Contemp Nurse 2016;52(4):398–409.

In **Australia**, access to NSPs is suboptimal for Indigenous people, and in **New Zealand**, people who inject performance and image-enhancing substances are underserved while the needs of Māori (Indigenous New Zealanders) are not appropriately met. According to the national NSP survey data, the HIV prevalence rate among Aboriginal and Torres Strait Islander was higher among this population compared to other respondents (3.6% and 1.1% respectively in 2018).

Policing and arrest

Globally, Black, Brown and Indigenous peoples are disproportionately targeted by drug law enforcement and face unique forms of discrimination across the criminal legal system. in many countries, these communities face higher rates of arrest, prosecution and incarceration for drug offences than the general population, despite similar rates of drug use and selling. According to data from the Global Drug Policy Index 2021, covering 30 countries, several countries studied were singled out as scoring particularly poorly with regards to the disproportionate impacts of the criminal justice response to drugs on ethnic groups, including Brazil, Canada, Mexico, Nepal, South Africa and the UK.[13]

The disproportionate targeting of Black, Brown and Indigenous peoples by drug law enforcement severely impacts their health. A recent literature review focusing on nine countries (Canada, China, India, Malaysia, Mexico, Russia, Thailand, Ukraine and the United States) found that policing is associated with higher risks of HIV infection among people who inject drugs and HIV risk behaviours, including avoidance of harm reduction services.[14] Similarly, fear of detection by law enforcement and the possibility of further increases the likelihood of engaging in high-risk drug taking behaviours.[15]

Over-incarceration

Since 2000, the world prison population has grown by 20 per cent,[16] while the female prison population has increased by 50 per cent.[17] Over 11 million people are currently imprisoned worldwide, the highest number ever recorded.[18] Punitive drug laws and policies are a major driver of this mass incarceration, with 1 in 5 people in prison globally – 2.5 million people – being detained because of drug offences;[19] and the proportion is even higher among women (over 1 in 3).[20] [21] UNAIDS estimates that 56-90 per cent of people who inject drugs will be incarcerated at some stage in their lifetime.[22]

Black, Brown, and Indigenous people are overrepresented in the world's prisons. Higher arrest and incarceration rates for these communities do not reflect a higher prevalence of drug use; rather they

[13] Nougier, M. & Cots Fernandez, A., 'The Global Drug Policy Index 2021' (London, November 2021), p. 44, https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report%20EN.pdf
[14] Pieter Baker et al., 'Policing practices and HIV risk among people who inject drugs – a systematic literature review', Epidemiologic Reviews (2020), https://academic.oup.com/epirev/advance-article-abstract/doi/10.1093/epirev/mxaa010/5979505.
[15]6 UNODC (2016) World Drug Report 2016; Fisher H. & Measham F, Night Lives: Reducing Drug-Related Harm in the Night Time Economy, Durham University, the APPG on Drug Policy Reform, The Loop & Volteface (2018).
[16] Walmsley, R. / World Prison Brief (2015), 'World Prison Populations List' [pdf].
[17] Ibid.
[18] Penal Reform International (2020), 'Global Prison Trends 2020' [pdf].
[19] UNODC (2021), 'World Drug Report 2021' [pdf].
[20] Penal Reform International (2015), 'Global Prison Trends 2015' [pdf].
[21] UNODC (2018), 'World Drug Report 2018: Women and Drugs' [pdf].
[22] UNAIDS (2014), 'GAP Report 2014: People left behind: People who inject drugs' [pdf].

are a result of law enforcement's stronger focus and greater use of violence and force in urban areas, lower-income communities and communities of colour.[23]

In the **UK**, for instance, black people are prosecuted for drug offences at more than eight times the rate of white people (2017 data) and are sentenced to immediate custody nine times the rate of white people.[24] According to another study conducted in London between July and September 2020,[27] in the midst of a global pandemic, of the over 65,000 people stopped and searched, 65% were searched for drugs, with over three-quarters of all searches resulting in no further action. In other words, over 48,000 people were stopped and searched – predominantly for drugs – on the basis of unfounded suspicions. Black men aged 18-24 were 19 times more likely to be stopped and searched than the general population. Black children (aged 10-17) were also stopped and searched, at significantly higher rates than white adults and white children.[29]

Similarly in the **USA**, black people are discriminated against at every stage of the criminal legal process, from policing, to pretrial detention, sentencing, parole and post-incarceration. Although black people comprise 13% of the US population and levels of drug use are similar across people of different ethnicity, black people comprise 29% of those arrested for drug offences and represent nearly 40% of those incarcerated in state and federal prisons for drug offences.[25]

Brazil is yet another example where the implementation of punitive drug control has clear racial implications. In Brazil, 64% of all people incarcerated are black, while 26% of men in prison and 62% of women in prison are deprived of their liberty for a drug offence.[26]

The consequences of incarceration can transcend individuals and even generations. Incarceration of a parent or breadwinner can impact a family's income and ability to fulfil its basic needs. Their incarceration can impact their health, finances, social stability, family and personal relationships. Women are particularly affected, as they are usually the primary or sole caregivers in their homes. Negative consequences for children can extend to social exclusion, educational attainment, housing status and health.[27] [28] [29] These effects are compounded in the social groups that are more likely to experience incarceration, reinforcing pre-existing inequalities related to race, nationality and class.

Redirecting funding from ineffective law enforcement to health

Every year, USD 100 billion is estimated to be spent on global drug law enforcement, roughly 750 times more than the amount invested in life-saving services for people who use drugs.[30] In 2019, the total budget for harm reduction in **Thailand** was estimated to be USD 1.7 million; in contrast, the

[23] Drug Policy Alliance, 'Race and the Drug War' [web page, accessed October 2021].
[24] IDPC, 'Taking stock of half a decade of drug policy: An evaluation of UNGASS implementation' (London, 2021), p. 56, http://fileserver.idpc.net/library/UNGASS_5y_Review.pdf
[25] IDPC, 'Taking stock of half a decade of drug policy: An evaluation of UNGASS implementation' (London, 2021), p. 56, http://fileserver.idpc.net/library/UNGASS_5y_Review.pdf
[26] IDPC, 'Taking stock of half a decade of drug policy: An evaluation of UNGASS implementation' (London, 2021), p. 56, http://fileserver.idpc.net/library/UNGASS_5y_Review.pdf
[27] Gatti, U., Tremblay, RE., and Vitaro, F. (2009), 'Iatrogenic effect of juvenile justice', Journal of Child Psychology and Psychiatry, 50 (8), 991–998; Gilman, AB. (2015), 'Incarceration and the life course: Predictors, correlates, and consequences of juvenile incarceration' [Ph.D Thesis].
[28] Gilman, AB., Hill, KG., and Hawkins, JD. (2015), 'When is a youth's debt to society paid? Examining the long-term consequences of juvenile incarceration for adult functioning, Journal of Developmental and Life-Course Criminology, 1(1), 33-47.
[29] Doherty, EE. et al. (2016), 'Examining the consequences of the "prevalent life events" of arrest and incarceration among an urban African-American cohort', Justice Quarterly, 33(6), 970-999.
[30] Transform Drug Policy Foundation (2013), 'The War on Drugs: Wasting Billions and Undermining Economies' [pdf].

Thai government allocated around 1,500 times this amount to drug law enforcement activities.[31] Drug law enforcement expenditure in Thailand is USD 1.8 billion. In Indonesia, drug law enforcement is estimated to be USD 250 million, of which USD 81 million is for prison costs for drug-related offences and USD 31 million for prison costs for possession for personal use. The Drug Enforcement Administration in the US cost US tax-payers USD 3.136 billion[32] in the financial year 2019 and focuses primarily on drug law enforcement, both domestically and abroad.

To decolonize drug policy, funds must be redirected away from the institutions that uphold racist, discriminatory policies and disrupt the white supremacist system created to perpetuate colonial violence.[33] Calls for funding to be redirected from ineffective, punitive drug law enforcement to social, health and other community services must be heeded if drug policy reform is to address the root causes of the harms created by the war on drugs.[34]

Harm reduction interventions that seek to reduce the negative health and social harms of drug use and drug policy are drastically under-implemented and underfunded. Considering the positive impacts that harm reduction has on the lives of people who use drugs, it is critical to urgently redirect resources away from harmful drug law enforcement and towards harm reduction services that are gender-sensitive and tailored to underserved communities, including Black, Brown and Indigenous people who use drugs.

Recommendations

Based on the above, we call on the Committee to highlight the following in its general recommendation on article 5(e)(iv):

- That ethnic communities are disproportionately affected by punitive drug control policies, including in policing, imprisonment and restricted access to the health, harm reduction, treatment and social services they may need.
- That drug control has perpetuated a colonial legacy whereby systemic forms of oppression and criminalisation are particularly affecting ethnic communities, including Black, Brown and Indigenous peoples.
- That the criminalisation of people who use drugs disproportionately affects ethnic communities, resulting in poorer health outcomes, including higher rates of HIV and hepatitis C, and overdose deaths.
- That these systemic issues will not be addressed unless:
    - Prisons are only used as a means of very last resort
    - Drug use and possession for personal use should be decriminalised to reduce contact between people who use drugs, in particular ethnic minorities, and the police
    - Drug law enforcement funding is redirected towards a health and harm reduction approach
    - Harm reduction and drug dependence treatment services are adequately scaled up, funded, and adapted to the needs of specific groups such as women and ethnic groups

[31] Tanguay, P. for Harm Reduction International (2019) 'Law Enforcement Expenditure in Thailand: Consultant findings from Law Enforcement expenditure Study conducted within the Global Fund Harm Reduction Advocacy in Asia project' [unpublished].
[32] Drug Enforcement Administration, 'Staff and Budgeting' [web page, accessed October 2021].
[33] Harm Reduction International (2018), 'The lost decade: Neglect for harm reduction funding and the health crisis among people who use drugs' [pdf].
[34] Harm Reduction International (2021), 'Failure to Fund: The Continued Crisis For Harm Reduction Funding In Low- And Middle-Income Countries' [pdf].