



Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights

On the barriers to access social protection faced by people who use drugs

December 2021

Submitting organisation:

The International Drug Policy Consortium is a global network of over 190 non-government organizations that advocate for drug policy reform to advance social justice and human rights.

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Background: The relation between drug use and poverty

1. Drug use is prevalent across all social classes and groups. Despite stigmatising narratives that connect drugs to poverty and vice versa, UN data shows that drug use increases with wealth, both globally and within each country¹. Most people do not experience any harm when they use drugs; the UN estimates that only 13% of people who used drugs in 2019 developed a harmful pattern of drug use². However, health and socio-economic harms associated to drug use are disproportionately borne by people who live in poverty³, as harms are mediated by stigma, criminalisation, and lack of access to basic health, harm reduction, and social protection.
2. States often demand that people who use drugs change their behaviour by criminalising them or, as we shall see in this submission, by excluding them from basic social protection. The disproportionate impact of policing and drug enforcement on people who live in poverty, or who face other forms of intersecting marginalisation, is well evidenced⁴. Formal or informal obstacles to accessing social services will also inevitably target people who live in poverty, as they are the ones who rely on the state for basic health and welfare.
3. Demands that people who use drugs change their behaviour are also undermined by the fact that States themselves overwhelmingly fail to provide evidence-based drug treatment and harm reduction services. According to UN data in 2019, only one in eight people with drug dependence received drug treatment⁵, down from one in six in 2016⁶ - in many countries available drug treatment is not based on scientific evidence⁷. With a few exceptions, the availability and coverage of life-saving harm reduction interventions, from opioid agonist treatment to drug consumption rooms, is limited even in countries where they are nominally present⁸, particularly for marginalised groups⁹.

Formal barriers to accessing social protection for people who use drugs

Answer to Question 2: To what extent do conditionalities attached to the granting of social protection benefits undermine social protection systems? What is the impact of such conditionalities on people who experience poverty?

Examples of conditionalities in accessing social protection

4. In several countries, public authorities or service providers have put in place formal policies that exclude people who use drugs from accessing certain forms of social protection, from public housing to disability benefits. In this section we provide a non-exhaustive list of examples.

Exclusion from public housing

5. In the **United States**, public housing authorities (PHAs) that receive Federal assistance are required to include in lease agreements a clause¹⁰ that allows them to terminate a tenancy if they suspect that any person living in the rented housing has engaged in a drug offence, including drug possession for personal use¹¹. According to the Drug Policy Alliance, 4.8 million households are subject to this regime, the vast majority of which earn less than 20,000 USD per

year¹². In other countries, bans on access to public housing in connection with drug policies are implemented at local level. For instance, in 2012 a man was evicted from social housing in **London** after failing to pass a drug test¹³. In **France**, entire families have been evicted from social housing by local authorities when one of their members were sentenced for drug dealing¹⁴.

Exclusion from shelters for street-based people or survivors of violence

6. In many countries, public or private shelter providers impose conditions for access to protective housing based on abstinence from drug use. Research from **Canada**¹⁵ shows that strict policies against substance use in shelters for street-based people exclude and marginalise people with a drug dependence, pushing them back into the streets. According to the **United Kingdom** national network of NGOs working with street-based people, ‘in some parts of England, people are sleeping rough because no accommodation services will accept active drug use’¹⁶. In **Brazil**, the social programme ‘Morada Monitorada’ run by the state of Sao Paulo provides housing and support to people for up to 6 months, but with the condition that they stop using drugs¹⁷.
7. In **Canada**¹⁸ or **Spain**¹⁹ amongst many other countries, some shelters for women who have survived violence also adopt low or zero tolerance approaches to drug use, leaving women who use drugs and have suffered violence with ‘nowhere to go’²⁰. This is particularly worrying considering that surveys indicate significant rates of drug dependence amongst women in shelters who have undergone intimate partner violence, or state violence²¹. In Spain, zero tolerance policies risk leaving women who have suffered violence but cannot abide by such rules in ‘situations of institutional neglect’²².

Exclusion from education

8. In **Sweden**, students have been suspended or expelled from school after testing positive for drug use, with the police reporting them to social services or filing charges; in a shocking case, one student became homeless after he was excluded from school²³. In the **United Kingdom**, a survey of 151 university policies found out that 70% of policies included expulsion as a consequence of drug possession for personal use²⁴. In the 2019-20 school year, 513 children were permanently excluded from schools in **England** for drug and alcohol-related activities²⁵. In **Costa Rica**, using or possessing drugs within a school can lead to up to 30 days of exclusion from education²⁶. Studies²⁷ and official data²⁸ show that school exclusions disproportionately target children living in poverty and from marginalised groups, and that they have long-term impacts on children, including less opportunities for training and employment²⁹, and links with greater rates of criminal justice involvement³⁰.
9. In 2017, the **Philippines** unveiled plans to conduct random mandatory drug tests in primary and secondary schools (a practice also documented amongst other countries in **Sweden**³¹, the **United States** and **Russia**³²), warning that those testing positive could be expelled or denied admission. In the **United States**, students will be excluded from federal financial aid to attend university if they receive a drug conviction, even if it is for a misdemeanour (which includes simple drug possession³³). This led to 1,032 rejections in the 2016-2017 cycle³⁴.

Exclusion from social security

10. Several countries have established drug-related conditionalities to social security assistance for people who are unable to earn sufficient income. In the **United States**, over a quarter of states require that applicants for cash assistance undergo screening for drug use; if they test positive, the benefit can be denied, or they might be required to attend abstinence-based treatment.³⁵ Nine states ban people convicted for a drug felony from receiving cash assistance, and one does the same for food stamps³⁶. In **Australia**, a recent pilot programme will subject 5,000 recipients of jobseekers and youth allowances to drug tests; those who fail the test will see a decrease in the amount of money they receive in cash each month³⁷. In **New Zealand**, people on jobseeker benefits who are requested to take a drug test by a prospective employer must oblige; if they do not take it or fail the test, they can have their welfare payments cut.³⁸
11. In other countries, people who use drugs can be excluded from income security schemes for disability. For instance, in both **Ukraine**³⁹ and in the **United States**⁴⁰ disability benefits (and in the United States Medicare and Medicaid) will be denied if drug or alcohol use led to the disability. Until a 2019 judicial decision, in **Switzerland** people with a drug dependence were barred from receiving disability insurance⁴¹, as it was argued that their inability to work could be due to their dependence. Even after the court's decision, many cantonal offices still demand abstinence as a condition for eligibility⁴².

Exclusion from drug dependence treatment

12. In some programmes, people undergoing opioid agonist treatment (OAT, also called opioid substitution treatment or OST) with agonists such as methadone or buprenorphine, can see their treatment discontinued if they are found to use illegal drugs, thus excluding them from the best evidence-based available treatment and putting their health at risk⁴³. For instance, in **Sweden** a survey of OAT patients showed that a third of them had been involuntarily discharged from treatment, and 60% had been afraid of the same⁴⁴.

Elements for consideration under international human rights law

13. We urge the Special Rapporteur to consider the following reflections on conditionalities and people who use drugs in his forthcoming report.
14. Conditionalities should not be punitive. In theory, conditionalities seek to influence the behaviour of their targets in order to improve their health and welfare⁴⁵. However, punitive conditionalities that exclude people who use drugs from social protection have the opposite effect. As one testimony puts it, their main impact is to 'further marginalise the most marginalised'⁴⁶, creating more power imbalance and oppression.⁴⁷ This has already been recognised by the CESCR, who in 2009 recommended to Australia that it 'review conditionalities (...) that may have a punitive effect on disadvantaged or marginalised families, women or children'⁴⁸.
15. Conditionalities must respect minimum core obligations and social protection floors. Many of the conditionalities described in this submission exclude people who use drugs from basic social protection floors⁴⁹, as well as from States' minimum core obligations pertaining to the rights to

health, adequate housing, education, or social security, a breach that is not permissible under international human rights law⁵⁰.

16. Drug-related conditionalities are unnecessary and disproportionate. Rights limitations are permissible insofar as they are necessary to achieve a legitimate aim, and proportionate. However, a majority of the drug-related conditionalities described above are based on prejudiced notions around the ‘evil’ of drug use, rather than on evidence concerning the actual impact of drugs on people’s lives, and the necessary means to achieve positive health outcomes. Furthermore, drug-related conditionalities are grounded on assumptions around ‘individual responsibility’ that ignore the social and structural determinants of drug-related harms, thus placing an unreasonable and disproportionate burden on people who use drugs. They also fail to recognise that people with drug dependence could experience painful physical or psychological withdrawal symptoms if they ceased to use drugs immediately, particularly in contexts where the State fails to provide any form of harm reduction services, evidence-based drug treatment, or other forms of support for people who use drugs.
17. States must ensure that people who use drugs can effectively realise their rights. States have the obligation to ‘give special attention’⁵¹ to individuals and groups that face difficulties in exercising their rights. This requires taking targeted measures to ensure that marginalised populations have access to social protection. Even where conditions on access to certain social programmes connected to drug use are permissible, States must take proactive measures to ensure that the rights of people who use drugs are still realised. For instance, in some shelters practitioners might want to create drug-free spaces to address challenges concerning communal cohabitation. However, that cannot be done at the price of excluding people who use drugs from equal access to emergency housing. In these cases, it falls on the State to create shelter programmes that are accessible to people who use drugs under harm reduction principles.⁵²

Formal barriers to accessing social protection for people who use drugs

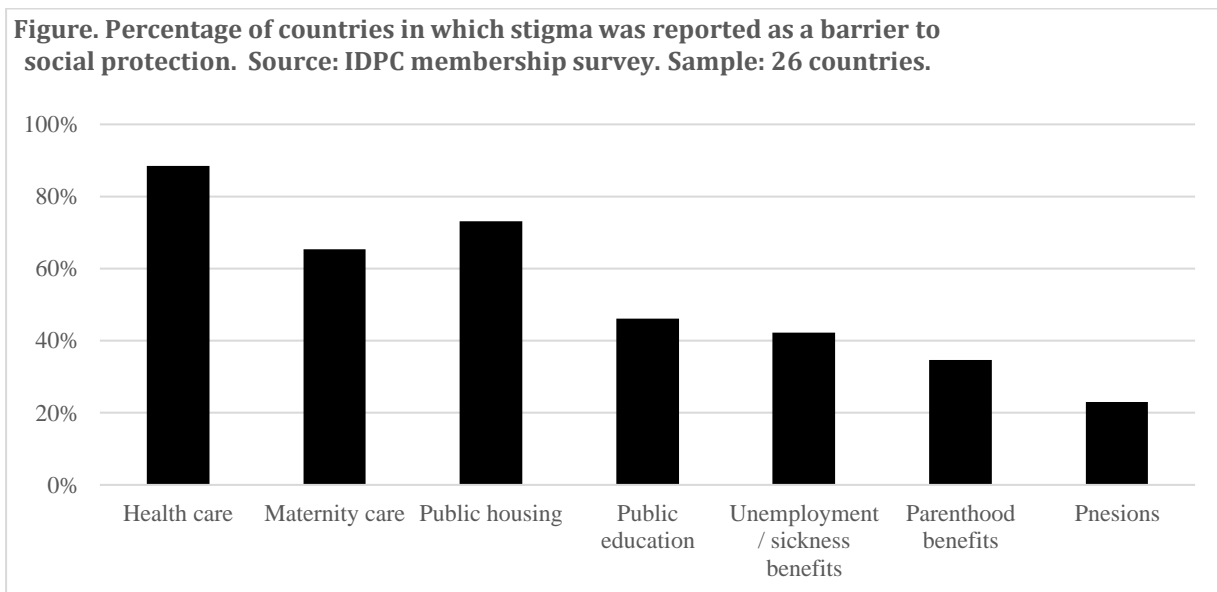
Answer to Question 4: What is the rate of non-take-up for the various social benefit schemes available in your country? What obstacles prevent eligible individuals and households from accessing the benefits to which they are entitled?

18. A broad range of UN agencies, human rights experts, and researchers have recognised that in almost all countries, stigma and discrimination are the most important barriers to accessing social services for people who use drugs, who often refrain from seeking assistance due to fears of shame, rejection, or punishment.
19. Several quantitative and qualitative studies have found that people who use drugs experience stigma and discrimination in the health sector, including by practitioners, which deters them from seeking life-saving harm reduction services, as well as services connected to HIV/AIDS, Hepatitis C, and TB⁵³. In 2017, 12 UN entities including UNAIDS, WHO and OHCHR, issued a joint statement on discrimination within health-care settings⁵⁴, noting that stigma ‘serves as a barrier to accessing health services, affects the quality of health services provided, and reinforces

exclusion’. Similar findings have been made by the UN Special Rapporteur on the right to health on several occasions⁵⁵.

20. In preparation for this submission, we ran a survey with members of the IDPC network on their perception of informal barriers faced by people who use drugs in accessing social protection⁵⁶. 34 responses were received, corresponding to 26 countries. Stigma was perceived as 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 73% of them. In a significant number of countries, stigma was also seen as a barrier to public education and security income benefits. Several responses highlighted that stigma is particularly severe against people facing intersecting forms of oppression, particularly women.

Figure. Percentage of countries in which stigma was reported as a barrier to social protection. Source: IDPC membership survey. Sample: 26 countries.



21. Some of the testimonials provided by the IDPC membership illustrate the way in which stigma and discrimination hinder access to social protection.

- *‘Health care workers in public hospitals are not interested in giving any type of services to people who use drugs. They discriminate against them by keeping them waiting for so long. Many housing agents are reluctant to offer services to people who use drugs since they may not want to be associated with persons who can bring drugs to their premises’.* Women’s Nest, Kenya.
- *‘They [people who use drugs] would be systematically put at the end of the list/queue. Regarding health care services, they are just not received, and they end up leaving by themselves’.* Médecins du Monde, Tanzania.
- *‘Although officially no one is denied [access to services] for substance use, people who use drugs are routinely excluded from health care, especially maternal care due to high stigma/discrimination levels and threat of child apprehension’.* WHRIN / Ryerson University, Canada.

- *‘In some occasions they [people who use drugs] are required to wait for a long time before they are visited, so that they will give up in trying to access the service. (...) Discriminatory treatment is too obvious, and it makes them feel bad’.* Corporación Viviendo, Colombia.

22. In light of this, we urge the Special Rapporteur to recognise the role of stigma and discrimination as critical obstacles in accessing social protection services for marginalised population like people who use drugs, and to highlight that States have an obligation to take appropriate and targeted measures to ensure their to access social protection, including by.

- a. Removing punitive laws, policies and practices that target people who use drugs, including the criminalisation of drug possession for personal use.
- b. Promote and invest in training to ensure non-judgemental service providers to deliver social protection services for people who use drugs, including in particular peer and community-led organisations.
- c. Reviewing and strengthening laws to prohibit discrimination in the provision and delivery of social protection services for people who use drugs, and investing in training service providers on how to engage with marginalised populations.

ENDNOTES

- ¹ See: https://wdr.unodc.org/wdr2020/field/WDR20_BOOKLET_1.pdf, p. 10.
- ² See: https://wdr.unodc.org/uploads/wdr2020/documents/WDR20_Booklet_2.pdf, p. 20.
- ³ See: https://wdr.unodc.org/wdr2020/field/WDR20_BOOKLET_1.pdf, p. 10.
- ⁴ <https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report.pdf>, p. 44.
- ⁵ See: https://wdr.unodc.org/uploads/wdr2020/documents/WDR20_Booklet_2.pdf, p. 31.
- ⁶ See: http://fileserv.idpc.net/library/UNGASS_5y_Review.pdf, p. 23.
- ⁷ See: http://fileserv.idpc.net/library/Shadow_Report_FINAL_ENGLISH.pdf, p. 42.
- ⁸ <https://globaldrugpolicyindex.net/wp-content/themes/gdpi/uploads/GDPI%202021%20Report.pdf>, p. 48
- ⁹ Ibid, p. 49.
- ¹⁰ As of 2020, the Federal Public Housing Occupancy Guidebook still specifies that ‘The lease must state that the PHA may evict a family when the PHA determines that a household member is illegally using a drug’. See: <https://www.hud.gov/sites/dfiles/PIH/documents/PHOGLeaseRequirements.pdf>, p. 20.
- ¹¹ See: https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_housing_02.04.21.pdf
- ¹² Ibid.
- ¹³ See: <https://www.haringey.gov.uk/news/drug-addict-evicted-council-home>
- ¹⁴ See: https://www.bfmtv.com/immobilier/location/hlm-pourquoi-les-bailleurs-sociaux-peuvent-expulser-les-dealers-et-leur-famille_AV-202109070295.html
- ¹⁵ See: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf, p. 147.
- ¹⁶ See: <https://www.homeless.org.uk/our-work/resources/supporting-drug-users>
- ¹⁷ See: <https://www.uniad.org.br/artigos/2-dependencia-quimica/moradia-monitorada-unidade-recomeco-helvetia/>
- ¹⁸ See: <https://www.hivlegalnetwork.ca/site/gendering-the-scene-women-gender-diverse-people-and-harm-reduction-in-canada-full-report/?lang=en>, p. 12.
- ¹⁹ In Spain the Network for the Assistance and Comprehensive Recovery of Women who Suffer Sexist Violence in Catalonia subjects clients ‘to rules they may find difficult to abide by, including (...) in some cases, a ban on using drugs’. See: <https://womenanddrugs.wola.org/wp-content/uploads/2020/10/Metzineres-ENG.pdf>
- ²⁰ See: <https://www.hivlegalnetwork.ca/site/gendering-the-scene-women-gender-diverse-people-and-harm-reduction-in-canada-full-report/?lang=en>, p. 12.
- ²¹ Ibid.
- ²² See: <https://womenanddrugs.wola.org/wp-content/uploads/2020/10/Metzineres-ENG.pdf>
- ²³ See: <http://fileserv.idpc.net/library/CESCR-Submission-Sweden-Final.pdf>
- ²⁴ See: <https://www.release.org.uk/sites/default/files/pdf/publications/Taking%20the%20Hit%20-%20Student%20drug%20use%20and%20how%20institutions%20respond%20-.pdf>, p. 11.
- ²⁵ See: <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england/2019-20>
- ²⁶ See: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=45466&nValor3=47903&strTipM=TC, arts. 82 and 87.
- ²⁷ See a review in: <https://link.springer.com/article/10.1007/s11292-018-09351-0>
- ²⁸ Official data from the United Kingdom also shows that the permanent exclusion rate for pupils eligible for Free School Meals is 0.16, compared to 0.04 for those not eligible. The rates of suspensions and exclusions are very significantly higher for children belonging to racial minorities. See: <https://explore-education-statistics.service.gov.uk/find-statistics/permanent-and-fixed-period-exclusions-in-england/2019-20>

²⁹ Ibid.

³⁰ See: <https://www.tandfonline.com/doi/abs/10.1080/00131911.2018.1513909>

³¹ See: <http://fileserv.idpc.net/library/CESCR-Submission-Sweden-Final.pdf>

³² For the latter two and a review of the effectivity of school-based random student drug testing, see: <https://www.emcdda.europa.eu/system/files/publications/6575/tdau17003enn.pdf>

³³ See: <https://drugabuse.com/addiction/drug-abuse/penalties/>,

³⁴ See: https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_education_02.05.21-final.pdf, p. 7.

³⁵ See: https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_publicbenefits_02.04.21.pdf, p. 2.

³⁶ Ibid.

³⁷ See: https://www.dss.gov.au/sites/default/files/documents/09_2020/d20-990234-dacdt-overarching20200204-27-august-2020-updates.pdf

³⁸ See: <https://www.theguardian.com/australia-news/2019/sep/10/the-coalition-want-to-drug-test-welfare-recipients-heres-why-experts-think-its-a-bad-idea>

³⁹ Ukraine law 1105-XIV establishes that temporary disability benefits will not be provided where disability has been caused by alcohol or 'drugs intoxication. See: <https://zakon.rada.gov.ua/laws/show/1105-14?lang=en#Text>

⁴⁰ In the United States, Social Security Disability, Supplemental Security Income benefits, and Medicare and Medicaid coverage can be denied to those whose drug or alcohol use is a 'contributing factor material to their disability'. See: https://uprootingthedrugwar.org/wp-content/uploads/2021/02/uprooting_report_PDF_publicbenefits_02.04.21.pdf, p. 2.

⁴¹ See: https://www.swissinfo.ch/eng/opioid-case_drug-addicts-entitled-to-disability-insurance--says-court/45141752

⁴² According to correspondence with NGO Fachverband Sucht (<https://fachverbandsucht.ch/de>). Available upon request.

⁴³ See: <https://www.bmj.com/content/373/bmj.n784>, p. 5.

⁴⁴ Socialstyrelsen (2020), *Läkemedelsassisterad behandling vid opioidberoende*, <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2020-3-6607.pdf> p. 18.

⁴⁵ See: <https://www.ohchr.org/documents/issues/epoverty/humanrightsapproachtosocialprotection.pdf>, p. 48.

⁴⁶ See: https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf, p. 147.

⁴⁷ See: <https://www.ohchr.org/documents/issues/epoverty/humanrightsapproachtosocialprotection.pdf>, p. 48.

⁴⁸ See: <https://uhri.ohchr.org/Document/File/1679dc41-a04f-4946-9b6f-e29bb0e0d79d/23F966E3-8F6E-42E4-A568-119FEA55BB12>

⁴⁹ See: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524

⁵⁰ See: <https://www.refworld.org/pdfid/4538838e10.pdf>, para. 10.

⁵¹ As CESCR has pointed out with regards to the right to social security. See:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19&Lang=en, p. 31. ,

⁵² For an expanded argument on this, see: https://moam.info/safe-as-houses-shelter_5a230fac1723dd21f1ece37a.html

⁵³ See literature cited in footnotes 59 and 100-103, in:

https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf

⁵⁴ See: https://www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf

⁵⁵ See: <https://www.ohchr.org/Documents/Issues/Health/drugPolicyLaw.pdf>; <https://undocs.org/A/65/255>; <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25797&LangID=E>

⁵⁶ Survey data is available with IDPC upon request. In total 34 responses were gathered, concerning the situation in 26 countries: Argentina, Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Côte d'Ivoire, Germany, French Guiana, India, Indonesia, Kenya, Mali, Mauritius, Mexico, Myanmar, Nepal, New Zealand, Peru, South Africa,

Switzerland, Tanzania, Ukraine, United Kingdom, Uruguay. Only one single respondent found that there was no discrimination in accessing social protection in their country – New Zealand.