



CENTRE ON  
DRUG POLICY  
EVALUATION



**Submission to the United Nations High Commissioner for Human Rights pursuant to HRC Res. 47/21 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 through transformative change for racial justice and equality”**

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Centre on Drug Policy Evaluation  
c/o Li Ka Shing Knowledge Institute of St. Michael's Hospital  
30 Bond Street  
Toronto, Ontario  
Canada M5B 1W8

Email: [nazlee.maghsoodi@mail.utoronto.ca](mailto:nazlee.maghsoodi@mail.utoronto.ca)

[www.cdpe.org](http://www.cdpe.org)

HIV Legal Network  
1240 Bay Street, Suite 600  
Toronto, Ontario  
Canada M5R 2A7

Email: [schu@hivlegalnetwork.ca](mailto:schu@hivlegalnetwork.ca)

[www.hivlegalnetwork.ca](http://www.hivlegalnetwork.ca)

## I. Introduction

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, 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.

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.

We are grateful to the Office of the High Commissioner for Human Rights for the opportunity to make this submission focusing on systemic racism and human rights violations by law enforcement officers against Africans and people of African descent, in the context of Canada's drug laws and policies, to contribute to accountability and redress.

## II. Disproportionate Impact of Punitive Drug Policy on Black Communities

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 a drug poisoning crisis that has resulted in [nearly 27,000 overdose deaths](#) between January 2016 and September 2021 across Canada.<sup>i</sup>

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.

Canada's drug control framework is rooted in, and reinforces, systemic racism. From the anti-Asian sentiment that fueled Canada's first anti-drug law in 1908<sup>ii</sup> to the anti-Black rhetoric that strongly influenced the criminalization of cannabis in 1923,<sup>iii</sup> Canada's early anti-drug laws were rooted in racist and anti-immigrant sentiment – and their impacts continue to be felt most harshly today by racialized communities.

From 2014 to 2020, police in Canada made more than 600,000 arrests for drug offences; two-thirds of those were for simple drug possession.<sup>iv</sup> **Troublingly, Black communities in Canada are disproportionately charged, prosecuted, and incarcerated for drug offences**, a phenomenon recognized more broadly by the UN High Commissioner for Human Rights, who noted in their [2021 report](#) that people of African descent are subject to “disproportionate stops, arrests and incarceration, including for drug-related crimes.”<sup>v</sup> Such racial profiling **deprives Black people 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”<sup>vi</sup> – 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.”<sup>vii</sup> 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:**

- A [2022 report](#) analyzed non-cannabis simple drug possession arrest data from police services in select major cities in Canada. Data from 2015 to 2021 indicates that Black people are nearly three times more likely in Ottawa, nearly four times more likely in Toronto, and around 6.6 times more likely in Vancouver to be arrested for drug possession than their representation in the population would predict. Such racial disparities were attributed to racial profiling and targeting of Black people by drug law enforcement.<sup>viii</sup>
- An unpublished 2021 report examined racial differences in cannabis possession and trafficking charges within Peel Region, Ontario in the years immediately preceding and following cannabis legalization in Canada. Black people in Peel Region were 3.4 times more likely prior to legalization, and 4.6 times more likely after legalization, to appear in cannabis possession charges than their representation in the general population would predict. Black people in Peel Region were 3.1 times more likely prior to legalization, and 3.9 times more likely following legalization, to appear in cannabis trafficking charges than their presence in the general population would predict. In sum, data from Peel Region reveal that during both the pre-legalization and post-legalization periods, Black people were more likely to face both cannabis possession and trafficking charges. Despite dramatic declines overall in cannabis possession and trafficking charges, legalization did little to reduce racial disparities in cannabis-related charge practices in Peel Region.<sup>ix</sup>
- A [2020 study](#) conducted by the Ontario Human Rights Commission found that Black people were more likely to be charged, over-charged, and arrested by the Toronto Police Service. Between 2013 and 2017, Black people in Toronto were

- 4.3 times more likely to be charged with cannabis possession than their representation in the general population would predict.<sup>x</sup>
- A [2020 report](#) found that Black 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.<sup>xi</sup>
  - A [2018 report](#)<sup>xii</sup> and a [2020 study](#)<sup>xiii</sup> found that Black 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.
  - [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.<sup>xiv</sup>
  - In a 1995 study of racism in 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 accused Black people at a higher rate than accused white people meant that bail courts saw a significantly higher proportion of accused Black people, resulting in larger proportions of accused Black people being jailed before trial.<sup>xv</sup>

Despite the enactment of the *Youth Criminal Justice Act* in 2003, resulting in an increased use of youth diversion programs in Canada, selection bias remains a problem that affects Black youth. For example, a study on the years preceding the legalization of cannabis in Canada found that among youth between the age of 12 and 17 arrested for cannabis possession in Ontario, **Black youth are more likely to be formally charged and less likely to be cautioned or diverted out of the justice system by police than white youth and youth from other racialized groups.**<sup>xvi</sup>

While the legalization of cannabis in Canada has resulted in a significant reduction in youth contact with the Canadian criminal legal system (driven by a decrease in cannabis offences), Black youth in Peel Region, Ontario continue to be significantly overrepresented in cannabis charges. An unpublished 2021 report examined racial differences in cannabis possession and trafficking charges within Peel Region in the years immediately preceding and following cannabis legalization in Canada. Black youth (12-17 years of age) in Peel Region were 3.4 times more likely prior to legalization, and 3.5 times more likely after legalization, to appear in cannabis possession charges than their representation in the general population would predict. Black youth in Peel Region were three times more likely prior to legalization, and 1.6 times more likely following

legalization, to appear in cannabis trafficking charges than their presence in the general population would predict. While youth cannabis possession and trafficking charges declined dramatically after legalization, racial disparities remain as Black youth were more likely to face such charges during both the pre-legalization and post-legalization periods.<sup>xvii</sup>

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.”**<sup>xviii</sup> 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.”<sup>xix</sup> According to the [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.<sup>xx</sup>

In 2017, concerned at reports of racial profiling and the 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...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...”<sup>xxi</sup> Additionally, in its [2021 report](#), the UN High Commissioner for Human Rights concluded 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.”<sup>xxii</sup>

One key response to mitigate the harms of drug prohibition is the decriminalization of simple drug possession. A growing number of UN entities and human rights experts have expressed support for decriminalization 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,<sup>xxiii</sup> and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment.<sup>xxiv</sup> In 2018, all 31 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.<sup>xxv</sup> 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 call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption,”<sup>xxvi</sup> as a means 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](#).<sup>xxvii</sup>

In Canada, there is strong support for decriminalization of personal drug possession from community organizations, harm reduction and human rights advocates, as well as public health associations and authorities. In 2021, 112 human rights and public health organizations released a [national drug decriminalization platform](#)<sup>xxviii</sup> for Canada that recommended not only the decriminalization of simple drug possession, but also of necessity trafficking, defined as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply, in line with a human rights and public health-based approach to drug policy. Moreover, [Health Canada's Expert Task Force on Substance Use recommended](#) "Health Canada end criminal penalties related to simple possession."<sup>xxix</sup> Provincial<sup>xxx</sup> and municipal<sup>xxxi</sup> authorities are increasingly joining these calls and three jurisdictions have formally requested an exemption from the provision in Canada's drug law criminalizing simple possession. **Despite the evidence base and growing calls for decriminalization, Canada has not decriminalized simple drug possession.**

### ***Overrepresentation of Black People and Lack of Equivalent Health Care Access in Prisons***

The legacy of racist law enforcement and criminal law practices has meant that **Black people are staggeringly overrepresented 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](#)."<sup>xxxii</sup> While accounting for only [3.5% of Canada's total population](#),<sup>xxxiii</sup> Black people in 2018-2019 represented [8% of the federal prison population](#).<sup>xxxiv</sup> In Ontario, a study revealed that in 2010, Black men were five times more likely to be incarcerated than white men, and Black women were almost three times more likely to be incarcerated than white women.<sup>xxxv</sup>

Moreover, almost 20% of Black federal prisoners are incarcerated for a drug-related offence.<sup>xxxvi</sup> In particular, Black women are more likely than white women to be in prison for that reason.<sup>xxxvii</sup> According to the Correctional Investigator of Canada, 54% of Black women in federal prisons were serving sentences for drug-related offences in 2017,<sup>xxxviii</sup> 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.<sup>xxxix</sup> Between fiscal years 2007-8 and 2016-17, Black people comprised the largest proportion (42%) of individuals convicted of drug importing/exporting.<sup>xl</sup>

Significant numbers of prisoners also use drugs. In a national survey conducted by 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 17% of men and 14% of women reported injecting drugs.<sup>xli</sup> 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.<sup>xlii</sup> Not surprisingly, research shows that the incarceration of people who inject drugs is a factor driving Canada's HIV and HCV epidemic.<sup>xliii</sup>

Already, rates of HIV and HCV in prison are significantly higher than they are in the community. 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.<sup>xliv</sup> 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,<sup>xlv</sup> federal and provincial prisoners in Canada continue to experience barriers to OAT, including long waitlists and inappropriate medication terminations.<sup>xlvi</sup> 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.<sup>xlvii</sup> Moreover, a number of provincial and territorial prisons still do not offer OAT to prisoners or impose severe restrictions on access,<sup>xlviii</sup> resulting in acute withdrawal among prisoners and an increased risk of use, relapse, and overdose.<sup>xlix</sup>

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.<sup>i</sup>

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.<sup>ii</sup> To date, only 9 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."<sup>iii</sup>

Access to naloxone, a medication used to counter the effects of an opioid overdose, is also critical in the context of an overdose crisis. In 2016, Health Canada reclassified its status and made naloxone available without a prescription, facilitating free, unrestricted access to naloxone through first line responders, health centres, and pharmacies.<sup>iiii</sup> However, prisoners do not receive the same standard of care. In most cases, naloxone continues to be only accessible to prison health care staff; an increasing number of prison authorities also make naloxone accessible to correctional staff. A limited number of prisoners (e.g., those who are already taking OAT or are known to correctional authorities to have a history of opioid use or overdosing) are given take-home naloxone kits only when they are released back into the community.<sup>lv</sup> As Health Canada itself has noted, "Naloxone is a safe drug and administering naloxone to a person that is unconscious because of a non-opioid overdose is unlikely to create more harm."<sup>lv</sup> Correctional staff will not always be immediately available in overdose situations, yet a timely response to an opioid overdose can mean the difference between life and death.

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,<sup>lvi</sup> including key interventions recommended by the UN Office on Drugs and Crime, UNAIDS, WHO, and numerous other UN entities, such as naloxone, needle and syringe programs, and drug dependence treatment including OAT.<sup>lvii</sup> 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 HCV services, at a standard that is equivalent to that in the community.”<sup>lviii</sup> In addition, incarcerated women should have access to gender-specific health care that is at least equivalent to that available in the community;<sup>lix</sup> the UN Committee on the Elimination of Discrimination Against Women has affirmed that this includes prison-based needle and syringe programs and OAT.<sup>lx</sup>

### 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.

To address these harms and human rights violations, the CDPE and HIV Legal Network urge the High Commissioner for Human Rights to make the following recommendations to governments in their report on systemic racism and human rights violations by law enforcement officers against Africans and people of African descent:

- 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, 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.”<sup>lxi</sup>
- Decriminalize the possession of all drugs for personal use as well as necessity trafficking (i.e., the selling and sharing of a controlled substance for subsistence, to support personal drug use costs, and to provide a safe supply) 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 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),<sup>lxii</sup> 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.

- Implement key health and harm reduction measures in all prisons in Canada, including OAT, needle and syringe programs, 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.
- Ensure and support the full involvement of civil society organizations, including organizations and networks of people who use drugs and Black 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”<sup>lxiii</sup> as an integral element of the human right to meaningful participation in public life.

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<sup>i</sup> Government of Canada, *Opioid-related harms in Canada*, March 2022.

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<sup>iii</sup> B. Fischer, K. Ala-Leppilampi, E. Single, and A. Robins (2003). Cannabis law reform in Canada: Is the “saga of promise, hesitation and retreat” coming to an end? *Canadian Journal of Criminology and Criminal Justice*, 45(3), 265-298.

<sup>iv</sup> 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.

<sup>v</sup> Report of the UN High Commissioner for Human Rights, *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*, UN Doc No. A/HRC/47/53, 1 June 2021.

<sup>vi</sup> Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995.

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

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<sup>ix</sup> A. Owusu-Bempah, S. Wortley, R. Shlapak, and N. Lake (2021). *The Impact of Cannabis Legalization on Youth Contact with the Canadian Criminal Justice System*. Report prepared for the Canadian Centre on Substance Use. Ottawa: CCSA.

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- <sup>xv</sup> *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, supra.
- <sup>xvi</sup> K. Samuels-Wortley (2022). Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada. *Race and Justice*, 12(2), 387-410.
- <sup>xvii</sup> A. Owusu-Bempah, S. Wortley, R. Shlapak and N. Lake, supra.
- <sup>xviii</sup> *A Disparate Impact*, supra.
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- <sup>xxi</sup> 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.
- <sup>xxii</sup> Report of the UN High Commissioner for Human Rights, supra at para. 42.
- <sup>xxiii</sup> 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, 65<sup>th</sup> 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.
- <sup>xxiv</sup> Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22<sup>nd</sup> Session, UN Doc A/HRC/22/53, February 1, 2013.
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