Supporting Health and Human Rights in Drug Policy: Brief to the Minister of Health and Canadian Delegation to the UN Commission on Narcotic Drugs

Prepared for the 62nd session of the UN Commission on Narcotic Drugs
and its High-Level Ministerial Segment

Canadian Civil Society Working Group on UN Drug Policy

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Introduction

The High-Level Ministerial Segment of the 62nd Commission on Narcotic Drugs (CND) in Vienna on March 14th and 15th is the next significant meeting of UN Member States to focus on global drug policy. In CND Resolution 60/1, Member States decided that the Ministerial Segment will be the moment "to take stock of the implementation of the commitments made to jointly address and counter the world drug problem, in particular in light of the 2019 target date" that was laid out in the *2009 Political Declaration and Plan of Action* adopted by the Commission.[1] The Ministerial Segment follows three years after the UN General Assembly Special Session on the World Drug Problem (UNGASS) in April 2016.

Why this meeting is an important moment in international drug policy development

The upcoming High-Level Ministerial Segment in March is important because it follows so closely on the heels of the UNGASS 2016 and provides another opportunity to move the UN discourse toward the goal of increasing support for the implementation of a public health and human rights-based approach to drugs among more UN Member States.

The UNGASS in 2016 was ostensibly to be an important opportunity for Member States to consider more substantive changes to country-level responses to narcotic drugs and psychoactive substances, and for them to have an open and honest debate on the successes and failures in addressing the "world drug problem," including via the measures laid out in the *2009 Political Declaration and Plan of Action.* However, during the UNGASS process, Member States largely failed to engage with the considerable evidence that the global drug control regime was—and is—faltering and in real need of more substantive reform. The foundational treaty of the current international drug control system, the *Single Convention on Narcotic Drugs, 1961* was signed more than 50 years ago. In the decades since, ample scientific evidence has emerged regarding effective ways of preventing and treating problematic substance use and associated drug-related harms, as has evidence of the human rights violations and public health damage that the current prohibition-oriented system has engendered. At the time of the UNGASS in 2016, the evidence made a compelling case for reform of the current system. While modest progress was made in certain aspects of the *UNGASS Outcome Document*, the "open and honest" debate that was hoped for did not occur among Member States and continues to be elusive in UN venues on drug policy.

In October 2018, the International Drug Policy Consortium (IDPC), a global network of 177 non-governmental organizations working in areas related to drug policy, released *Taking stock: A decade of drug policy*, an analysis of the last 10 years of UN drug policy from the perspective of civil society. Using the UN's own data, peer-reviewed research, and grey literature reports from civil society, the report concludes, among other things, that:

[1] Commission on Narcotic Drugs (2017). *Resolution 60/1: Preparations for the sixty-second session of the Commission on Narcotic Drugs in 2019*, http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_60/CNDres_2017/Resolution_60_1_60CND.pdf.

1) the commitments and targets set in the *2009 Political Declaration and Plan of Action* have not been achieved, and in many cases have resulted in counterproductive policies;

2) data sources for evaluating progress rely too heavily on government reporting and do not include independent civil society and academic research; and

3) the measures of success in the implementation of drug policy should be reviewed.[2]

The 62nd session of the CND in March 2019, including its High-Level Ministerial Segment, marks the end of the decade of action envisioned in the *2009 Political Declaration and Plan of Action* and, therefore, an opportunity to chart a new course in global drug policy for the next decade and possibly beyond. As civil society partners in this work, we urge Canada to exercise leadership in working with Member States, specialized UN agencies and civil society organizations toward achieving a more open and honest debate about the need for reforming the current international system and approach to the world drug problem.

The Canadian Civil Society Working Group on UN Drug Policy has put together the following priority issues for your consideration as negotiations proceed in the lead up to the 62nd session of the CND and its High-Level Ministerial Segment this March.

Summary of Recommendations

1. Promote and implement a public health approach to drugs, based on scientific evidence and human rights
2. Respect, protect and fulfill human rights
3. Support harm reduction as a key component of a comprehensive response to drugs
4. Pursue the decriminalization of possession of drugs for personal consumption as essential to a public health and human rights-based approach
5. Reflect the realities of the impacts of drug policies on the ground, both positive and negative
6. Reject ill-conceived and unrealistic demands for a "drug-free world"
7. Ensure system-wide coherence by promoting and adopting more comprehensive and sophisticated indicators for evaluating the impacts of drug policy
8. Ensure access to essential medicines and facilitate research on therapeutic uses of psychotropic substances
9. Recognize the effect of drug policies on youth, support evidence-based education, and meaningfully include young people in policy-making discussions
10. Ensure diverse representation at key international meetings on drugs

[2] International Drug Policy Consortium (2018). *Taking stock: A decade of drug policy - A civil society shadow report*, https://idpc.net/publications/2018/10/taking-stock-a-decade-of-drug-policy-a-civil-society-shadow-report. ["IDPC, *Taking Stock* (2018)"]

Recommendations

1. Promote and implement a public health approach to drugs, based on scientific evidence and human rights

International consensus and calls for a comprehensive, evidence-based public health approach to problematic substance use continue to grow,[3] including a recent call by the Global Commission on Drug Policy for regulation of all drugs.[4] A public health approach is an organized, comprehensive, multi-sectoral effort directed at maintaining and improving the health of populations, incorporating evidence-informed policy and practice, and based on principles of social justice (including equity and the protection and promotion of human rights and the right to the highest attainable standard of health).[5,6] This approach is driven by identifying and then acting on those determinants of health which need to be addressed in order to achieve reduced problematic substance use and associated harms (see Appendix A). This includes physical, biological, psychological, social (e.g. wealth distribution, education, housing, social inclusion) and ecological determinants of health, as well as the determinants of social and health inequities (including stigmatization and discrimination in various manifestations). In the particular case of Indigenous peoples in Canada, those determinants include the legacies of colonialism and its ongoing racism, social exclusion, and denial of cultural continuity, political and territorial sovereignty and self-determination. A public health approach, therefore, reframes the dialogue on substance use to focus on health and social, rather than criminal justice, responses.

Drug "use" is but one indicator among many in assessing the harm and benefits of particular policies and programs, and reducing drug use *per se* — much of which is not necessarily harmful or problematic — is not necessarily the objective of public health-based initiatives.[7] Over-emphasis on trying to reduce or prevent the use of drugs tends to target, blame and stigmatize people who use drugs, often ignoring the structural and other determinants of (problematic) use. Consequently, overly focusing on the goal of reducing or eliminating use can lead to ill-advised punitive, discriminatory and draconian policies, resulting in mass incarceration[8] and other significant human rights violations,[9] which not only do little to protect and promote the health of people who use drugs and of communities, but in fact produce or compound harms associated with problematic drug use.

Domestically, Canada has stated its commitment to a public health approach to the legalization and regulation of cannabis, and to further strengthening the *Canadian Drugs and Substances Strategy* based on a public health orientation.[10] **Therefore, we urge Canada to also take a strong, international leadership role in promoting and continuing to model a public health approach to psychoactive substances in general.**

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[3] Volkow, N. *et al*. (2017). "Drug Use Disorders: Impact of a Public Health Rather than a Criminal Justice Approach." World Psychiatry 16(2): 213-14. doi:10.1002/wps.20428.

[4] Global Commission on Drug Policy (2018). *Regulation: The Responsible Control of Drugs,* (Geneva, Switzerland), http://www.globalcommissionondrugs.org/reports/regulation-the-responsible-control-of-drugs/.

[5] Canadian Public Health Association (2014). *A New Approach to Managing Illegal Psychoactive Substances in Canada,* https://www.cpha.ca/sites/default/files/assets/policy/ips_2014-05-15_e.pdf.

[6] Health Officers Council of British Columbia (2011). *Public Health Perspectives for Regulating Psychoactive Substances - What we can do about alcohol, tobacco and other drugs*, https://healthofficerscouncil.files.wordpress.com/2012/12/regulated-models-v8-final.pdf.

[7] Roberts, M., Bewley-Taylor, D. & Trace, M. (2006), *Monitoring Drug Policy Outcomes: The Measurement of Drug-related Harm.* (London: Beckley Foundation).

[8] Drucker, E. (2011), *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*, (New York: New Press); Alexander, M. (2012), *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, (New York: New Press).

[9] Barrett, D., Lines, R., Schleifer, R., Elliott, R. & Bewley-Taylor, D. (2008), *Recalibrating the Regime: The Need for a Human Rights-Based Approach to Drug Policy*, (London: Beckley Foundation and International Harm Reduction Association).

[10] See, for example, Health Canada (2018). *Background Document: Public Consultation on Strengthening Canada's Approach to Substance Use Issues,* (Ottawa: Health Canada), https://www.canada.ca/content/dam/hc-sc/documents/services/substance-use/canadian-drugs-substances-strategy/strengthening-canada-approach-substance-use-issue/strengthening-canada-approach-substance-use-issue.pdf.

2. Respect, protect and fulfill human rights

By consensus, including in both the CND and the UN General Assembly, Member States have explicitly and repeatedly directed that drug control efforts must be in conformity with the standards of international human rights.[11] The UN Office on Drugs and Crime (UNODC), the secretariat to the CND and the UN technical agency with the lead on drug policy matters, has affirmed that all of its programs, policies, and technical advice should further the realization of human rights, and cooperation between the UNODC and Member States should have as an outcome the development of States' capacities to meet their human rights obligations.[12] Despite this general rhetorical affirmation of human rights, attention to specific human rights issues in the context of drug policy remain contentious at the CND, and indeed increasingly under attack—as evidenced by the response at the CND (and elsewhere) of some Member States to interventions by NGOs raising human rights issues and two reports of the Office of the UN High Commissioner for Human Rights (OHCHR).[13]

Silence in the face of efforts to undermine accountability for human rights violations related to drug policy is not an acceptable option; it is to be complicit in the weakening of international human rights generally. It is, therefore, important that countries such as Canada raise these issues and advocate for policies, programs, and approaches that indeed conform to human rights standards, in keeping with Member States' own stated commitments. There are several specific human rights concerns, some already at play in the international discussions at the CND, where Canada can and should play a role in defending and advancing human rights. One such concern is the way in which an emphasis on prohibition and punitive policies continues to impede, or threaten to undermine, **access to controlled substances needed for medical purposes**, something that lies explicitly at the heart of the drug control regime (and is discussed separately below in Recommendation 8). In addition, other priority human rights issues that require attention in international fora such as CND include:

- **Stigmatization of people who use drugs**: We commend Canada for its leadership in securing adoption, at the 61st session of the CND in March 2018, of a ground-breaking resolution on measures to address the stigmatization of people who use drugs.[14] That resolution encourages Member States and UN agencies to take a variety of steps on this front, and also calls for a report from UNODC at the 2020 session of the CND regarding its actions to implement aspects of the resolution relevant for its work. We anticipate that Canada will use the occasion of the CND in 2020 to propose a strengthened resolution on stigma. In the interim, in keeping with the provisions of the resolution it has spearheaded, **we urge Canada to take the opportunity of the upcoming proceedings in 2019 to:**

    1. **Continue to raise the issue of stigma against people who use drugs, and its harmful impact on health and human rights, through its various statements and interventions, side events, etc.;**

    2. **Share with other Member States updates on some of Canada's own initiatives to address stigma, as well as research and resources that deepen Member States' understanding of stigma and the harms it causes to health and other human rights; and**

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[11] *E.g.,* 1998 UNGASS Declaration, para. 8; CND, 53rd Session, Resolution 53/2, para 2,: http://www.unodc.org/documents/commissions/CND-Res-2000-until-present/CND53_2e.pdf; 2016 UNGASS Outcome Document, preamble, https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf.

[12] UNODC (2012), *UNODC and the promotion and protection of human rights: Position Paper*. (Vienna, UNODC).

[13] Human Rights Council (4 September 2015), *Study on the impact of the world drug problem on the enjoyment of human rights: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/30/65, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_65_E.docx; Human Rights Council (14 September 2018), *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/39/39, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session39/Documents/A_HRC_39_39.docx.

[14] Commission on Narcotic Drugs (2018), *Resolution 61/11: Promoting non-stigmatizing attitudes to ensure the availability of, access to and delivery of health, care and social services for drug users*, http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_61/CND_res2018/CND_Resolution_61_11.pdf.

3. **Outline its commitment to supporting continued work, by UNODC and other relevant UN entities, to address stigma and its impact on the health and human rights of people who use drugs.**

- **Over-incarceration and disproportionality in sentencing**: Human rights bodies have increasingly expressed concerns about disproportionately harsh sentencing in the context of punitive drug policies, which contribute to over-incarceration and hence overcrowding in prisons and related violence and other unacceptable conditions of detention. The UN Commission on Crime Prevention and Criminal Justice (CCPCJ) has previously estimated in 2014 that one in five prisoners worldwide was incarcerated for a drug offence. Furthermore, that the overwhelming majority of those in prison for drug offences were accused of drug use or drug possession for personal use, and of the rest, most are accused of low-level dealing, with only a small percentage imprisoned for violent drug offences or large-scale trafficking.[15] In some regions, women are disproportionately affected by punitive drug laws, with an even higher proportion of women in prison being incarcerated for drug offences –which is also the case in Canada. Racial disparities in incarceration rates are also of concern, again including in Canada, with Indigenous and Black people disproportionately represented.[16] In both its 2015 and 2018 studies, the OHCHR criticized the use of mandatory minimum sentences (MMS) and long sentences for drug-related offences, which have contributed to over-incarceration.[17] It was also critical of the discriminatory impact on women, who are imprisoned for drug-related offences more than for any other crime. Justice Canada-commissioned research going back more than a decade has concluded that MMS are ineffective for drug offences,[18] and the current Government of Canada has stated its concern[19] about mandatory minimum sentences but has yet to repeal them. In the meantime, Canadian courts, including the Supreme Court of Canada, have declared MMS unconstitutional in a number of circumstances (including a key ruling in relation to drug-related offences [20]) and the UN Committee on the Elimination of Discrimination Against Women (CEDAW) has recently recommended that Canada repeal MMS for minor, non-violent drug-related offences. [21] In the *2016 UNGASS Outcome Document*, Member States unanimously endorsed proportionate national sentencing policies.[22] **We therefore urge Canada to use the occasion of the upcoming CND to state its concern about the disproportionality in sentencing that is a continuing, widespread phenomenon damaging health and other human rights in multiple ways in many countries, and to announce its own commitment to repeal all mandatory minimum sentences for drug offences.**

- **Drug detention centres**: Drug detention centres are places where persons who use or are suspected of using drugs are confined, often with no or inadequate due process, and compelled to undergo diverse interventions such as forced labour and military style drills, as well as being subjected to involuntary medical interventions (often without scientific foundation), physical, sexual, and psychological abuse, the

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[15] UN Commission on Crime Prevention and Criminal Justice (April 2014), *World crime trends and emerging issues and responses in the field of crime prevention and criminal justice, note by the Secretariat*, UN Doc. E/CN.15/2014/5, https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_23/_E-CN15-2014-05/E-CN15-2014-5_E.pdf.

[16] The Correctional Investigator of Canada (2015), *Annual Report 2014–2015 of the Office of the Correctional Investigator*; The Correctional Investigator of Canada (2013), *Annual Report 2012–2013 of the Office of the Correctional Investigator*.

[17] Human Rights Council (4 September 2015), paras. 45, 52; Human Rights Council (14 September 2018), paras. 56, 57, 60.

[18] Gabor, T. & Crutcher, N. (2002), *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* (Justice Canada). See also: Canadian HIV/AIDS Legal Network (2006), *Mandatory Minimum Sentences: Why Everybody Loses*, http://www.aidslaw.ca/site/mandatory-minimum-sentences-why-everyone-loses/?lang=en and Bennett, D. and Bernstein, S. (2013), *Throwing Away the Keys: the Human and Social Cost of Mandatory Minimum Sentences* (Vancouver: Pivot Legal Society), http://d3n8a8pro7vhmx.cloudfront.net/pivotlegal/pages/395/attachments/original/1372448744/Final_ThrowingAway_lo-res_-_v2.pdf?1372448744.

[19] See, for example, The Canadian Press (May 7, 2017), "Liberals eye changes to mandatory minimum sentences," https://www.cbc.ca/news/politics/mandatory-minimum-sentences-liberal-trudeau-harper-government-1.4103855.

[20] See *R. v. Lloyd*, 2016 SCC 13, https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15859/index.do. The Supreme Court of Canada ruled that the MMS in question was unconstitutional because it violated the right to be free from cruel and unusual punishment.

[21] UN Committee on the Elimination of Discrimination Against Women (November 2016), *Concluding Observations: Canada*, UN Doc. CEDAW/C/CAN/CO/8-9, para. 45.

[22] 2016 UNGASS Outcome Document, para. 4(l).

denial of adequate medical care and nutrition, and other forms of torture and cruel, inhuman or degrading treatment. These types of interventions disregard medical evidence.[23] As noted by the UN Special Rapporteur on Torture, these programs violate international law and are "illegitimate substitutes for evidence-based measures, such as substitution therapy, psycho-social interventions, and other forms of treatment given with free and fully informed consent."[24] While a wide range of UN and international organizations have jointly called for their closure, it remains the case that hundreds of thousands of people are detained in such centres. **The international community, including Member States at the CND, must continue to press for their closure to end the widespread, gross human rights violations documented as occurring routinely in such centres, and to instead urge States to ensure access to voluntary, affordable, accessible, and evidence-based treatment for problematic substance use in community settings. Canada should include such concerns in its interventions at the CND.**

- **Extrajudicial executions**: Recent years have seen a significant surge in extrajudicial killings in the course of law enforcement-based approaches in some countries, such as the Philippines, Indonesia and Bangladesh, resulting in tens of thousands of deaths in violation of international human rights law.[25] The UNODC, the International Narcotics Control Board (INCB), the OHCHR, various human rights bodies (including the UN special rapporteurs on health and on extrajudicial, summary or arbitrary executions), and a number of European countries have condemned such violations. **It is essential for Canada and other Member States to continue to raise these concerns in fora such as the CND and to pressure States to cease such abuses.**

- **Death penalty**: Some countries continue to use the death penalty for drug crimes. The death penalty is ineffective as a policy measure and an abhorrent violation of human rights. The use of the death penalty for punishment for drug offences violates international law.[26] This position has been asserted by the UN Human Rights Committee, the body of independent experts mandated with monitoring the implementation and interpretation of the *International Covenant on Civil and Political Rights*,[27] the UN High Commissioner for Human Rights,[28] and by the UNODC.[29] Canada has, in the past, repeatedly joined other Member States in stating its concern at the CND about this ongoing violation of international human rights law (e.g., most recently during the 2016 UNGASS, in conjunction with 65 other countries[30]) and **we urge that it continue to do so—and to consider with like-minded Member States expanding this statement of concern to include the closely-related matter of extrajudicial executions in the name of drug control, for the reasons noted above.**

- **Concrete normative human rights guidance**: In keeping with a recommendation from the Global Commission on HIV and the Law, the United Nations Development Program (UNDP) and the International Centre on Human Rights and Drug Policy, with the support of some Member States, have co-led the process of developing *International Guidelines on Drug Policy and Human Rights* over the course of several

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[23] World Health Organization (2009). *Assessment of Compulsory Treatment of People Who Use Drugs in Cambodia, China, Malaysia and Viet Nam*; Human Rights Watch (2012). *Torture in the Name of Treatment: Human Rights Abuses in Vietnam, China, Cambodia, and Lao PDR*, p.4.
[24] United Nations General Assembly (February 2013). *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. UN Doc. A/HRC/22/53; See also: Elliott, R. *et al*. (2011), *Treatment or Torture?: Applying International Human Rights Standards to Drug Detention Centers*. (New York: Open Society Foundations), http://www.opensocietyfoundations.org/sites/default/files/treatment-or-torture-20110624.pdf.
[25] See summary in IDPC, *Taking stock* (2018), pp. 58-59.
[26] Lines, R. (2007), *The Death Penalty for Drug Offences: A Violation of International Human Rights Law*. (London: International Harm Reduction Association), 2007, http://www.ihra.net/files/2010/07/01/DeathPenaltyReport2007.pdf.
[27] UN Human Rights Committee (8 July 2005), *Concluding Observations: Thailand*, CCPR/CO/84/THA, para. 14; UN Human Rights Committee (29 August 2007), *Concluding Observations: Sudan*, CCPR/C/SDN/ CO/3, para. 19.
[28] Human Rights Council (4 September 2015).
[29] UNODC (8-12 March 2010). *Drug Control, Crime Prevention and Criminal Justice: A Human Rights Perspective:* Note by the Executive Director. Presented to the UN Commission on Narcotic Drugs, Fifty-third Session, Vienna. Doc. E/CN.7/2010/CRP.6*–E/CN.15/2010/CRP.1*.
[30] For a full list, see: *CND Blog*: *Live Reporting from the Commission on Narcotic Drugs*, http://cndblog.org/maps/death-penalty (International Drug Policy Consortium).

years, through a series of expert and regional consultations that have involved States, various UN agencies, UN special rapporteurs on human rights, and civil society experts. Those *International Guidelines* will be launched at the upcoming 62nd CND session in March 2019, and will provide concrete normative guidance, rooted firmly in international law, to States and others regarding the application of human rights standards to various aspects of drug policy. As a long-time supporter of human rights in international bodies, including the CND, **we urge Canada to co-sponsor the high-level event at the upcoming CND launching these *International Guidelines*, and to use its statements and interventions during the CND and High-Level Ministerial Segment to welcome these *International Guidelines* as a useful, practical tool for Member States in ensuring that drug policy is consistent with international human rights standards, which Member States have repeatedly affirmed must be the case. Canada should also demonstrate leadership by committing that it will review its own domestic drug law and policy using these *International Guidelines* as a key resource and should encourage other Member States to make use of them in similar fashion to assess and inform their own domestic drug law and policy.**

3. Support harm reduction as a key component of a comprehensive response to drugs

We encourage Canada to strongly advocate for harm reduction policies, practices and programs as a key component of any public health approach to address drug-related harms. As was noted repeatedly during the process leading up to the 2016 UNGASS Outcome Document, the Millennium Development Goal targets for addressing HIV among people who use drugs were widely missed, chiefly because of the lack of investment in harm reduction programs and punitive legal/policy environments that impeded their implementation, scale-up, and effective operation. In its statement to the 60th session of CND in 2017, UNAIDS warned of the staggering rise in HIV infections among people who inject drugs and noted that countries are failing to invest in and deliver effective strategies to address the growing problem.[31] The HIV epidemic has been central to provoking greater, albeit still inadequate, attention to harm reduction services for people who use drugs. However, it is just one harm among several that can undermine the right to the highest attainable standard of health of people who use drugs—as the ongoing crisis of opioid overdoses and related deaths across Canada demonstrates. We can and must do better.

Harm reduction is an increasingly important component of responses to substance use in Canada and globally. In fact, Canada has historically been among the global leaders in scaling up harm reduction interventions such as opioid agonist treatment (OAT) and needle and syringe programs (including the commitment in May 2018 to implement them in correctional facilities, although numerous concerns remain about the program details that have since been announced), as well as implementing innovations such as supervised consumption services, opiate-assisted treatment programs (including with hydromorphone and diacetylmorphine), drug checking services, distribution of sterile crack-smoking equipment, and exploring options to protect people who use drugs from the toxic and criminal nature of the illegal drug market through the legal provision of a "safe supply" of substances as a component of overdose prevention strategies. We are encouraged that, in the last couple of years, Canada has returned to playing more of its traditional leadership role in facilitating dialogue and building consensus internationally in support of comprehensive public health responses to substance use. In keeping with the description above, a public health approach necessarily includes a comprehensive package of health-based interventions such as harm reduction initiatives and the full implementation of drug treatment programs based on sound scientific review and evidence.

National strategies to address the "world drug problem" must include at least the key interventions outlined in the *WHO, UNODC, UNAIDS Technical Guide* as part of a comprehensive approach for addressing HIV among people who inject drugs.[32] These include harm reduction measures such as needle syringe programs (NSPs), OAT with medications such as methadone and buprenorphine, and condom distribution programs for people

[31] UNAIDS (16 March 2017), *Stopping the rise of new HIV infections among people who inject drugs,* Feature Story, http://www.unaids.org/en/resources/presscentre/featurestories/2017/march/20170316_CND.

[32] WHO, UNODC, UNAIDS (2012), *WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for HIV Prevention, Treatment and Care of Injecting Drug Users, 2012 Revision*. (Geneva: WHO Press), http://www.who.int/hiv/pub/idu/targets_universal_access/en/.

who use drugs and their sexual partners—all of which need to be accessible in not only the community but also in correctional facilities. Additionally, cultural connection and access to culturally relevant services are identified as key sources of resilience for Indigenous people, including for those struggling with problematic substance use and vulnerable to or living with HIV. As the three relevant specialized UN agencies point out in the *Technical Guide*, these initiatives are supported by comprehensive scientific evidence.[33] In addition, the *Technical Guide* acknowledges that, "although the World Health Organization has not reviewed the evidence on the effectiveness of supervised drug consumption/injection facilities in preventing HIV infection, evaluations in high-income countries where these facilities have been implemented have reported reduced risk behaviours among attending clients."[34] Certainly more recent reviews from other authoritative bodies (e.g., the European Monitoring Centre for Drugs and Drugs Addiction[35]), have demonstrated without doubt the benefits of such health services—and of course, Canada's own Supreme Court of Canada already recognized this in the well-known decision regarding Insite in Vancouver.[36] Canada now has more than 30 supervised consumption services and 20 overdose prevention sites. As such, it is well positioned to promote harm reduction as an effective approach to reducing drug-related harms.

Therefore, we urge Canada to maintain its leadership role in the promotion of a public health approach, including explicit, firm support for harm reduction interventions in international negotiations and policy, including at the CND.

4. Pursue and support the decriminalization of possession of drugs for personal consumption as essential to a public health and human rights-based approach

While there is now widespread affirmation within Canada and elsewhere that a public health and human rights-based approach to drugs is desirable, the concept of removing the most significant barrier to implementing such an approach—namely the criminalization of possession for personal use of scheduled drugs—remains elusive. This is tragically so even as the continued criminalization of people who use drugs subverts efforts to address the ongoing North American overdose crisis and the health needs of people struggling with problematic use, and thereby undermines public health and human rights more broadly.

Support for the decriminalization of possession for personal consumption, and its permissibility under the drug control treaties, has now been well-documented within the UN, including in a letter from the UN Special Rapporteur on the right to the highest attainable standard of health to the UNODC Executive Director, wherein he wrote: "At the root of many health-related problems faced by people who use drugs is criminalisation itself, which only drives issues and people underground and contributes to negative public and individual health outcomes."[37] Many UN agencies and entities have called for the decriminalization of possession and use of drugs, including the OHCHR,[38] UNAIDS,[39] World Health Organization (WHO),[40] the United Nations Development

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[33] *Ibid*.
[34] *Ibid*. Page 22.
[35] European Monitoring Centre on Drugs and Drug Addiction (update of June 7, 2018), "Drug consumption rooms: an overview of provision and evidence," http://www.emcdda.europa.eu/topics/pods/drug-consumption-rooms_en.
[36] Canada (A.G.) v. PHS Community Services Society, 2011 SCC 44.
[37] Pūras, D. (UN Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health)(December 7 2015). *Open letter to UNODC Executive Director Yury Fedetov, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS)*.
[38] Office of the High Commissioner for Human Rights (2018), *Implementation of the joint commitment to effectively addressing and countering the world drug problem with regard to human rights**, A/HRC/39/39, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session39/Pages/ListReports.aspx; See also: Office of the High Commissioner for Human Rights (2015), *Study on the impact of the world drug problem on the enjoyment of human rights - Report of the United Nations High Commissioner for Human Rights*, A/HRC/30/65, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx
[39] UNAIDS (2018), *Miles to go: Closing gaps, breaking barriers, righting injustices*, http://www.unaids.org/sites/default/files/media_asset/miles-to-go_en.pdf
[40] World Health Organization (2016), *Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations*, http://apps.who.int/iris/bitstream/handle/10665/128048/9789241507431_eng.pdf?sequence=1

Programme (UNDP),[41] a number of UN Special Rapporteurs on human rights,[42] the UN Committee on Economic Social and Cultural Rights,[43] UN Women,[44] as well as the UN High Commissioner for Refugees, UNICEF, the World Food Programme, the International Labour Organization, UNESCO, the UN Population Fund and the International Organization for Migration.[45]

That multiple agencies within the international system mandated to protect human rights, development, marginalized groups, and health have supported decriminalization of substances for personal consumption is not surprising. There is now copious evidence of the harms of criminalizing simple possession, particularly to vulnerable people. Since criminalization of drug possession directly leads to both individual and systemic stigma, it supports discrimination of people who use drugs and prevents people from seeking services. It also undermines the development of health services because needed resources are diverted to the criminal justice system (including correctional facilities) and because people with problematic drug use, when regarded as criminals, are not seen as deserving of services.

Indigenous populations, people of colour, women, children, youth and those with mental health and/or substance use issues are vulnerable populations that are disproportionally affected by criminalization and from criminal justice approaches that flow from this policy, such as mandatory minimum sentencing laws and practices.[46] In Canada, vulnerable populations, including youth and Indigenous people, continue to be disproportionately profiled by police (also see Recommendation 9, below: effects of drug policies on youth and children).[47] As of March 31, 2018, Indigenous prisoners represented 28% of the total federal prison population while comprising just 4.3% of the Canadian population. 40% of incarcerated women in Canada are of Indigenous ancestry.[48] As the *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* found, "persons described as black are most over-represented among prisoners charged with drug offences, obstructed justice and weapons possession,"[49] with almost 20% of Black federal prisoners incarcerated for a drug-related offence.[50] In particular, Indigenous and Black women are more likely than white women to be in prison for that reason,[51] and a staggering 53% of Black women in federal prisons are serving sentences for a

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[41] United Nations Development Programme (2015), *Addressing the development dimensions of drug policy,* http://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf

[42] Office of the High Commissioner for Human Rights (15 April 2016), *Joint Open Letter by the UN Working Group on Arbitrary Detention; the Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture and other cruel, inhuman or degrading treatment or punishment; the right of everyone to the highest attainable standard of mental and physical health; and the Committee on the Rights of the Child, on the occasion of the United Nation General Assembly Special Session on Drugs,* https://www.ohchr.org/Documents/Issues/Health/UNGASS-joint_OL_HR_mechanisms_April2016.pdf

[43] UN Committee on Economic, Social and Cultural Rights (26 October 2016), *Concluding observations on the combined fifth and sixth periodic reports of the Philippines*, E/C.12/PHL/CO/5-6, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/PHL/CO/5-6&Lang=En

[44] UN Women (2015), *A gender perspective on the impact of drug use, the drug trade, and drug control regimes*, https://www.unodc.org/documents/ungass2016//Contributions/UN/Gender_and_Drugs_-_UN_Women_Policy_Brief.pdf

[45] See: UNAIDS, UNHCR, UNICEF, World Food Programme, United Nations Development Programme, UNFPA, UN Women, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Office of the High Commissioner for Human Rights & International Organization for Migration (2017), *Joint United Nations statement on ending discrimination in health care settings*, http://www.unaids.org/sites/default/files/media_asset/ending-discrimination-healthcare-settings_en.pdf

[46] Office of the Provincial Health Officer (2013), *Health, Crime, and Doing Time: Potential Impacts of the Safe Streets and Communities Act on the Health and Well Being of Aboriginal People in BC,* presentation, https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/health-crime-2013-ppt.pdf

[47] Boyd, S. (2018, March 9). *Drug use, arrests, policing, and imprisonment in Canada and BC, 2015–2016*. (Vancouver: Author), http://drugpolicy.ca/wp-content/uploads/2018/03/Vandu-Report-Mar-9-2018.pdf.

[48] Office of the Correctional Investigator (2018), *Office of the Correctional Investigator Annual Report 2017-2018*. (Ottawa: Government of Canada), http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx.

[49] Report of the Commission on Systemic Racism in the Ontario Criminal Justice System (Toronto: Queen's Printer for Ontario, 1995) at pp. 69–70.

[50] Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2013. Available at www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20131126-eng.aspx

[51] The Correctional Investigator of Canada, *Annual Report 2014–2015 of the Office of the Correctional Investigator*, 2015.

drug-related offence, many of whom were carrying drugs across borders as a way to alleviate their situations of poverty.[52] In light of this situation, the UN Committee on the Elimination of Racial Discrimination (CERD) has, in its most recent review in 2017 of Canada's track record, expressed its concern about the disproportionately high rate of incarceration of Indigenous Peoples and persons belonging to minority groups, in particular African-Canadians, due to various reasons, including "over-policing of certain populations, drug policies and racially biased sentencing."[53] The Committee has recommended that Canada "address the root causes of over-representation of African-Canadians and Indigenous Peoples at all levels of the justice system, from arrest to incarceration, such as by … re-examining drug policies, … providing evidence-based alternatives to incarceration for non-violent drug users" (as well as implement key health and harm reduction measures across all prisons).

The relationship between stigma and criminalization is not an incidental one; it is "hard-coded" into the framework by which the majority of countries have historically treated substances and the people who use them. Deeming drugs and drug use as "bad" or "evil" has opened the door to creating a system where the primary interaction between the state and the person consuming drugs has been the denunciation of unlawful behaviour and punishment designed to deter such behaviour, concepts which are explicitly incorporated into Canadian law via the *Criminal Code*[54] and the *Controlled Drugs and Substances Act*.[55]

While denunciation has been effective at creating strong negative perceptions about drugs and people who use drugs within most sectors of society, it is clear that criminal prohibitions are *ineffective* in deterring actual drug use, especially among members of vulnerable populations. As noted in the 2018 UNODC *World Drug Report*, there has been no significant progress in the last decade either on reducing demand for substances or reducing drug-related health and social risks. Globally, the number of people aged 15-64 who used drugs at least once in 2016 is estimated to be 275 million—an increase of 31% from 2009. As for health and social harms, we have seen a surge of drug-related deaths 60% since 2000 and, while global rates of HIV and hepatitis C infection among people who inject drugs remain stable, they nonetheless also remain high at 11% and 51%, respectively.[56]

The data clearly demonstrate that, despite criminal prohibitions, the number of countries in which people inject drugs is growing, with women and children becoming increasingly affected, creating conditions where HIV prevalence among people who inject drugs reaches 35% in some regions.[57] Several studies have demonstrated that Indigenous populations in regions across Canada are acquiring HIV at a disproportionately higher and faster rate than the general Canadian population: almost 60% of HIV infections among Indigenous people between 1998 and 2005 were attributable to injection drug use.[58]

There are now at least 45 countries and jurisdictions that have removed criminal sanctions against people who use drugs.[59] Portugal, Uruguay, Colombia, the Czech Republic, as well as numerous U.S. states, are among the jurisdictions experimenting with decriminalization (i.e., removal of criminal penalties) for drug use or

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[52] The Correctional Investigator of Canada, *Annual Report 2012–2013 of the Office of the Correctional Investigator*, 2013

[53] UN Committee on the Elimination of Racial Discrimination (2017), *Concluding observations on the twenty-first to twenty-third periodic reports of Canada*, UN Doc. CERD/C/CAN/CO/21-23, paras. 15, 16(d).

[54] *Criminal Code* (Canada), R.S.C. 1985, c. C-46, s. 718(a-b) ("Purpose and Principles of Sentencing").

[55] *Controlled Drugs and Substances Act* (Canada), S.C. 1996, c. 19, s.10(1) ("Purpose of Sentencing").

[56] United Nations Office of Drugs and Crime (2018), *World Drug Report 2018* (United Nations publication), Sales No. E.18.XI.9, https://www.unodc.org/wdr2018/.

[57] Degenhardt, L., Peacock, A., Colledge, S., Leung, J., Grebely, J., Vickerman, P. *et. al*. (2017). *Global prevalence of injecting drug use and sociodemographic characteristics and prevalence of HIV, HBV, and HCV in people who inject drugs: A multistage systematic review*. The Lancet Global Health, 5(12), https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(17)30375-3/fulltext.

[58] Public Health Agency of Canada (2007). *HIV/AIDS Epi Updates, November 2007*. For additional data demonstrating the disproportionate impact of injection drug use – and hence related drug policy and programmes – in the HIV epidemic among Indigenous peoples in Canada, see: Public Health Agency of Canada (2010), *Population-Specific HIV/AIDS Status Report: Aboriginal Peoples,* http://www.phac-aspc.gc.ca/aids-sida/publication/ps-pd/aboriginal-autochtones/pdf/pshasrap-revspda-eng.pdf.

[59] Eastwood, N., Fox E., and Rosmarin, A. (2016), *A quiet revolution: Drug decriminalisation across the globe* (London: Release), https://www.release.org.uk/publications/drug-decriminalisation-2016.

possession – and some have moved further to implement various models of regulation of some drugs (e.g., cannabis), as has Canada as of October 2018.[60] Portugal decriminalized the possession of all formerly-illegal drugs in 2001, complemented by investments in health and other services. Although decriminalization solely of personal possession still leaves control of the market in the hands of organized criminals, the results did show a subsequent decrease in the number of people injecting drugs and in the number of people using drugs problematically, as well as decreasing overall drug use trends among young people (those aged 15-24).[61] A scientific consensus has emerged that policies of drug prohibition and criminalization exacerbate the negative health and social outcomes for people who use drugs.

Such evidence and experience have supported the conclusion in the report of the Organization of American States, *The Drug Problem in the Americas,* that "decriminalization of drug use needs to be considered as a core element in any public health strategy."[62] Decriminalization removes the challenges of over-incarceration and minimizes the harmful effects of arrest, detention, and punishment on people who use drugs. Decriminalization has been urged by numerous non-governmental bodies within Canada, including the Canadian Public Health Association, which called upon the federal government to work with provinces and territories to decriminalize personal possession of illegal substances and make other changes supporting human rights and public health.[63] Finally, decriminalization of personal possession of drugs is now a stated policy of two of the three major federal political parties in Canada.[64]

Therefore, in advocating a comprehensive public health approach to drugs, we urge Canada to emphasize that decriminalization of drug possession for personal use is a key component of implementing such an approach.

5. Reflect the realities of the impacts of drug policies on the ground

Since 2009, the landscape of drug policy has significantly changed. Unsatisfied with an international drug control status quo that prioritizes demand and supply reduction (i.e., reliance on criminal prohibitions), numerous States have implemented evidence-based local and national reforms aimed at addressing public health and human rights concerns. In response to new drugs and consumption methods, harm reduction services have been implemented and scaled up. As noted above, numerous jurisdictions seeking to reduce the harms of criminalization have removed criminal sanctions against people who use drugs. The most profound change, though, is that some states have created regulated drug markets for non-medical use, first in Bolivia with the coca leaf and now in Uruguay, 10 US states and Canada for cannabis.

It is important in 2019 that Member States acknowledge and reflect upon policy innovation, especially in relation to cannabis, that has remained the "elephant in the room" even as discussions about appropriate scheduling of cannabis are taking place at the WHO's Expert Committee on Drug Dependence (ECDD). Tensions are growing between Member State practice and outdated treaties – or unjustifiably inflexible and incorrect interpretations of those treaties. The way forward must include frank and open discussions aimed at resolving these tensions within the international drug control regime that have resulted from the legal regulation of cannabis. International experts have outlined *inter se* modifications as a mechanism for a group of Member States to mutually agree to amend their obligations under the drug control treaties, while leaving intact rights

[60] International Drug Policy Consortium (2015) *E-tool: Comparing models of drug decriminalization*, website, http://decrim.idpc.net/; Drug Policy Alliance (2015), *Drug Decriminalization*, website, http://www.drugpolicy.org/issues/drug-decriminalization.
[61] Eastwood *et al*. (2016), *A quiet revolution*.
[62] Organization of American States (2013), *The Drug Problem in the Americas*, http://www.oas.org/en/media_center/press_release.asp?sCodigo=S-007.
[63] Canadian Public Health Association (2014). *A New Approach to Managing Illegal Psychoactive Substances in Canada.*
[64] E.g., New Democratic Party of Canada (2018), *Taking effective action to respond to the opioid crisis in Canada*, resolution, on file; Liberal Party of Canada (2018), *Address the Opioid Response through a Public Health Approach,* resolution, https://2018.liberal.ca/policy/address-the-opioid-crisis-through-a-public-health-approach/.

and obligations of Member States not entering into such an agreement.[65] This would enable Member States to experiment with and evaluate the impacts of innovative policies promoting human rights and public health in a coordinated manner, while still operating within the boundaries of international law.

It is likewise important that Member States understand and discuss the policy implications of drug scheduling on public health and human rights at both the international and domestic level. A practice rooted in the earliest days of establishing a system of drug control, placing various substances on schedules—including drugs currently being used, drugs anticipated to be used in the future, and pre-cursors to manufacturing illegal drugs—has been at the core of international and domestic policies aimed at reducing the supply of illegal substances produced and made available for consumers. Scheduling and the subsequent enforcement measures taken to enforce scheduled drugs, however, has led to an "arms race" between producers and regulators that has resulted in the widespread availability of substances that are empirically more harmful than many that have been targeted through criminalization and enforcement. Coined in 1986 by Richard Cowan, the term "The Iron Law of Prohibition" refers to the dynamic whereby illegal-market actors attempt to circumvent prohibition by producing and trafficking more concentrated and potent drugs and producing novel chemical formulations that are not (yet) scheduled. As Cowan noted, "the harder the enforcement, the harder the drugs."[66] Arguably, the appearance of crack cocaine and synthetic cannabis are a result of prohibitions targeting powder cocaine and cannabis, respectively. In Canada, we are quite familiar with the dynamics of the Iron Law of Prohibition in the widespread appearance of the more potent and transportable fentanyl and its analogues that have significantly contributed to the ongoing overdose crisis. The notion that Member States can somehow "get ahead" in this arms race by scheduling more substances and creating more general categories of drugs scheduled is a fiction that is flagrantly contradicted by all available evidence, but has never been challenged at the CND, leading to actions that undermine public health and human rights, including the presence of a drug supply that is not only illegal but also toxic and deadly.

Therefore, we urge Canada to advocate for an open discussion and recognition of tensions within the treaty system and the effects of the scheduling regime on public health and human rights.

6. Reject ill-conceived and unrealistic demands for a "drug-free world"

In the 1998 UN Special Session on drugs, the General Assembly called for a "drug-free world." The notion that such a goal is achievable has been demonstrated to be patently absurd. It does not acknowledge the reality of drug use and reiterates an objective increasingly recognized as unrealistic. Such a simplistic declaration also undermines efforts to address the harms that may be associated with drug use through a range of evidence-based programs and services, and instead emphasizes abstinence-based approaches that do not work for many people and are even sometimes used as an excuse to deny or impede the development of a comprehensive set of evidence-based programs and services. Furthermore, the goal of being "drug-free" can be, and has been, used to "justify" the discriminatory mass incarceration that has been seen in numerous countries (including the United States and the Russian Federation), and the use and persistence of draconian, human rights-violating measures such as torture, drug detention centres, and the death penalty for drug crimes, concerns that we have identified above.

Therefore, we urge Canada to consistently oppose insertion of "drug-free world" language within UN documents as unrealistic and counter-productive.

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[65] Jelsma, M., Boister, N., Bewley-Taylor, D., Fitzmaurice, & M., Walsh, J. (2018). *Balancing Treaty Stability and Change: Inter se modification of the UN drug control conventions to facilitate cannabis regulation*, (Swansea: Global Drug Policy Observatory), https://www.tni.org/files/publication-downloads/balancing_treaty_stability_and_change.pdf.

[66] Cowan, R. (1986), *How the Narcs Created Crack: A War Against Ourselves*, National Review. 38 (23): 26–34.

7. Ensure system-wide coherence by promoting and adopting more comprehensive and sophisticated indicators for evaluating the impacts of drug policy

To date, Member States and other institutional actors have prioritized a small set of indicators to evaluate the effectiveness of drug policy, as a result of a narrow focus on reducing the demand for and supply of illegal drugs.[67] These include the price, purity, and perceived availability of illegal drugs, the number and volume of illegal drug seizures, the number of drug-related arrests and incarceration, and the level of drug use in the general population (with no discrimination between problematic and non-problematic forms of drug use). Even using these narrow indicators, drug policies have not, by and large, demonstrated their effectiveness. Moreover, research has shown that drug policies combining street-level law enforcement with drug supply interdiction have contributed extensively to a range of harms to the health and safety of individuals and communities.

The narrow set of indicators currently used to evaluate drug policy is focused primarily on process in the form of intermediary policy actions, thereby failing to measure endpoints and provide insight into how drug policies ultimately affect peace and security, development, and human rights, as well as the health issues that intersect all three of these. The limitations of this approach are apparent. Consider, for example, that key activities of the UNODC, INCB and other UN agencies (e.g., HIV prevention among people who use drugs, ensuring access to evidence-based treatment for problematic substance use, ensuring access to essential medicines) are not systematically evaluated by Member States as part of assessing the effectiveness of drug policy. Expanding the set of drug policy indicators to include those that measure health, peace and security, development and human rights impacts at the local, national, regional, and international levels would enable Member States to assess the diverse effects of drugs and drug policies, to place drug policy more effectively within wider national and international policy goals, and to implement more targeted and effective drug policies and interventions.

There recently has been increased understanding of the intersections between the goals and targets of the *Sustainable Development Agenda* and the impacts of drugs and drug policies.[68] In recognition that drug policies should not undermine the achievement of the *Sustainable Development Goals* (SDGs), the importance of ensuring system-wide coherence has been emphasized. The UNGASS Outcome Document presents opportunities for improving the evaluation of drug policies, including paragraph 4(h), which suggests the inclusion of human rights information in Member States' reporting on the implementation of the three drug control conventions, and paragraph 7(g) on improving impact assessments by employing relevant human development indicators and other measurements in line with the SDGs.

Therefore, as we approach the High-Level Ministerial Segment—and given ongoing work to improve the 'quality and effectiveness' of the *Annual Report Questionnaire* (ARQ)—**we urge Canada to work with like-minded States and others before, during and after the CND to:**

- **Support a move away from an emphasis on unachievable and misconceived "drug-free" targets, in favour of more meaningful targets that are realistic, measurable, and contribute to UN system-wide coherence;**

- **Support a move away from a narrow set of process indicators (e.g., numbers of arrests and convictions, quantities of substances seized, and hectares of crops eradicated) and instead adopt indicators reflecting health, peace and security, development, and human rights outcomes of drug-related policies and programmes; and**

[67] Centre on Drug Policy Evaluation (2016). *A Call for Reprioritization of Metrics to Evaluate Illicit Drug Policy.* Correspondence. Lancet 387(10026): 1371, https://cdpe.org/publication/a-call-for-a-reprioritization-of-metrics-to-evaluate-illicit-drug-policy/

[68] Extensive examinations elsewhere have identified intersections between many SDGs and drug policy, including the following publication: Segura, R. and Stein, S. (2018), *Aligning Agendas: Drugs, Sustainable Development, and the Drive for Policy Coherence*, https://www.ipinst.org/wp-content/uploads/2018/02/1802_Aligning-Agendas.pdf.

- **Support incorporating in the updated ARQ specific indicators for evaluating the impacts of drugs and drug policies that are aligned with the achievement of the SDGs—in particular SDGs 1 (poverty), 3 (health and well-being), 5 (gender equality), 8 (decent work and economic growth), 10 (reduced inequalities) and 16 (peace, justice and strong institutions)—and the operational recommendations of the UNGASS Outcome Document, in particular in the areas of human rights, availability of controlled substances for medical purposes, improved access to health services and better health outcomes, and the implementation of development programs in areas affected by supply-side activities to reduce the risk factors contributing to engagement in illegal drug markets.[69]**

8. Ensure full access to essential medicines and facilitate research on potential therapeutic uses of psychoactive substances

Ensuring the availability of controlled substances for medical and scientific purposes is a fundamental objective of the UN drug conventions and an obligation of Member States. To date, however, few countries have achieved this objective, and in its *2014 Annual Report*, the INCB concluded that 5.5 billion people live in countries with "low levels of, or non-existent access to," controlled medicines.[70] The access gap is particularly severe in low- and middle-income countries, a gap that the Global Commission on Drug Policy, in its 2015 report, called a "global crisis of inequitable access to controlled medicines" that is being stoked by the international drug control system.[71] We urge Canada to press for a concerted UN-wide effort to close the gap in the availability of and access to controlled substances for medical use, which must include the WHO, UNODC, INCB and UNDP.

Appropriate access to controlled medicines is strongly supported by CND Resolutions 53/4[72] and 54/6,[73] and World Health Assembly Resolutions WHA67.19[74] and WHA68.15.[75] Despite broad international support for these commitments to improve access to essential health services, too often these resolutions have been undermined by Member States and by the INCB, which have called for additional essential medicines (including ketamine, tramadol, and pregabalin) to be placed under international control, by-and-large ignoring the impact that these controls would have on access for medical uses in low-income countries.

With regard to ketamine, the WHO has repeatedly found that international controls are inappropriate given its widespread use as an irreplaceable anesthetic in widespread use in many developing countries. In 2015, the WHO's Assistant Director General for Health Systems and Innovation stated that placing the medicine under international control would constitute a "public health crisis" by depriving billions of patients access to safe surgery – a tacit acknowledgment that placing substances that have medical use under international control

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[69] Part 3 of International Drug Policy Consortium's (2018), *Taking Stock* proposes possible indicators, drawing from the SDGs and closely aligned with specific operational recommendations of the *UNGASS Outcome Document*.
[70] International Narcotics Control Board (2014), *Annual Report*, Chapter 1, https://www.incb.org/documents/Publications/AnnualReports/AR2014/English/AR_2014_E_Chapter_I.pdf.
[71] Global Commission on Drug Policy (2015), *The Negative Impact of Drug Control on Public Health: The Global Crisis of Avoidable Pain*, http://www.globalcommissionondrugs.org/reports/the-negative-impact-of-drug-control-on-public-health-the-global-crisis-of-avoidable-pain/.
[72] Commission on Narcotic Drugs (2010), *Resolution 53/4: Promoting adequate availability of internationally controlled licit drugs for medical and scientific purposes while preventing their diversion and abuse*, https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2010-2019/2010/CND_Res-53-4.pdf
[73] Commission on Narcotic Drugs (2011), *Resolution 54/6: Promoting adequate availability of internationally controlled narcotic drugs and psychotropic substances for medical and scientific purposes while preventing their diversion and abuse*, https://www.incb.org/documents/Psychotropics/Resolutions/CND_Res-54-6.pdf
[74] World Health Assembly (2014), *Resolution WHA67.19: Strengthening of palliative care as a component of comprehensive care throughout the life course*, http://apps.who.int/gb/ebwha/pdf_files/wha67/a67_r19-en.pdf
[75] World Health Assembly (2015), *Resolution WHA68.15: Strengthening emergency and essential surgical care and anaesthesia as a component of universal health coverage*, http://apps.who.int/gb/ebwha/pdf_files/wha68/a68_r15-en.pdf

constitutes a threat to public health in and of itself.[76] Despite this, several Member States continue to persist in their calls for international controls on this essential medicine.

Therefore, we urge Canada to engage other Member States in recognizing and reinforcing the leading role of the WHO as the primary specialized agency for health within the UN system.

We further urge Canada to recognize and advocate for the authority and role of the WHO in assessing substances for international control through the ECDD, strengthening access to controlled medicines, and executing its responsibilities under the international drug control treaties on medical and scientific matters. The WHO should be given the oversight role to ensure that the drug control conventions and system support a public health approach.

We further urge Canada and other Member States to emphasize the obligation of the INCB to ensure the availability of controlled substances for medical and scientific purposes and ensure that inappropriate regulatory barriers are not in place.[77]

9. Recognize the effect of drug policies on youth, support evidence-based education, and meaningfully include young people in policy-making discussions

Drug policies in Canada and abroad directly affect young people, including their mental and physical health, and social and economic outcomes. While the negative health effects from drug use are of reasonable concern, they should not take precedence over the safety and wellbeing of children, which is often compromised in an enforcement oriented, criminal justice approach to drugs.[78] The mandates set out by the international drug control system have not reduced the challenges faced by children who have lost their parents to incarceration, been affected by violent drug raids or violence perpetrated by criminal groups seeking to capitalize on drug markets, nor have they hindered the ability of children living in affected areas to not only consume drugs but also become involved in the distribution and trafficking of illegal substances. On the contrary, the overemphasis on criminalization and law enforcement approaches has only exacerbated these outcomes. Drug prohibition has not only failed to protect the wellbeing of children, it has also failed to subvert rates of youth substance use. Statistics on youth access to prohibited substances indicate that they remain easy to obtain and, in some cases, the lack of regulations make them easier to access than substances such as tobacco and alcohol.[79]

The primary goal of a vast majority of education initiatives around narcotic drugs and psychoactive substances is to instill fear to dissuade use or moralize against substance use rather than providing unbiased, evidence-based information. This directly contradicts Article 28 of the *Convention on the Rights of the Child* pertaining to the right to education.[80] With the legalization of cannabis, Canada has a new opportunity to rectify some of these previous approaches by adopting harm reduction and evidence as part of public health messaging and education campaigns.[81] For substances that remain illegal (as well as risky use of legal substances, e.g. binge drinking, tobacco use, and non-medical use of pharmaceuticals) an approach to education that is transparent,

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[76] World Health Organization (December 2015), "WHO recommends against international control of ketamine," (website), https://www.who.int/medicines/access/controlled-substances/recommends_against_ick/en/.

[77] See: WHO Executive Board (2014), *Resolution EB134.R7: Strengthening of palliative care as a component of integrated treatment within the continuum of care*; United Nations Millennium Development Goals Gap Task Force (2013), *Millennium Development Goal 8: The global partnership for development: making rhetoric a reality*, http://www.who.int/medicines/mdg/en/index.html.

[78] Polsby, D. (1997), *Ending the War on Drugs and Children*, Val. U. L. Rev. 31(537), http://scholar.valpo.edu/vulr/vol31/iss2/15.

[79] Hadland, S, Marshall, B., *et al* (2012), *Ready Access to Illicit Substances Among Youth and Adult Users*, Am J Addict. 21(5): 488–490, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3419381/.

[80] United Nations (1989). *General Assembly resolution 44/25: Convention on the Rights of The Child* (adopted 20 November 1989), www.ohchr.org/en/professionalinterest/pages/crc.aspx.

[81] Valleriani, J. *et al*. (2018), *Sensible Cannabis Education Toolkit*, https://cssdp.org/youthtoolkit/; Beck J. (1998), *100 years of "just say no" versus "just say know": Reevaluating drug education goals for the coming century*. Eval Rev. 22(1): 15-45, https://www.ncbi.nlm.nih.gov/pubmed/10183299.

nonjudgmental, and rooted in evidence in place of fear and the stigmatization of substance use should be seriously considered as an effective and viable approach to youth drug education.[82]

Youth have long been a central concern in the discussion of drug policy, but often are used as a means to an end rather than an active participant in the development and implementation of policies. When youth are made a central theme in developing policy but denied an active role in the process, it disregards their autonomy and their expertise in youth culture and perceptions, despite having valuable and enriching input to give.[83]

It is imperative that when youth are invited to participate, there is a priority to give space to young people with lived experience who are living at intersections of race, gender, sexuality, income, and ability. Statistics related to youth substance use show that LGBTQ youth have higher rates of substance use than their heterosexual and cisgender counterparts.[84] Indigenous youth are also extremely overrepresented in the Canadian prison system making up 46% of the incarcerated youth population.[85] For these reasons, it is imperative that an equity lens be used to inform any and all approaches to youth engagement for policy development. Especially in addressing the stigma faced by young people who use drugs, the inclusion and prioritization of young people with lived or living experience must continue to be a primary aspect of youth inclusion.[86]

Therefore, we urge Canada to acknowledge that the right to education as outlined in the *Convention on the Rights of the Child*, as it pertains to substances and harm reduction, is a key component in the protection of youth and entitles young people to drug education that is rooted in scientific evidence and harm reduction.

We also urge Canada to emphasize the negative impacts of the overemphasis on law enforcement approaches on children and youth internationally, and that alternatives to harsh criminal penalties for substance use are a key component to drug policy that aims to protect the safety of children.

Additionally, we support Canada's inclusion of young people in decision-making processes around substance use to date and urge Canada to continue and expand engagement with young people moving forward.

10. Ensure diverse representation at key international meetings on drugs

Canada has to date taken a leadership role in including civil society representation at international meetings on drug policy. We are appreciative of the efforts to increase the diversity of representation at the CND, including people with lived and living experience of problematic drug use, Indigenous people, and youth.

The participation of civil society organizations in drug control policy debates is vital to the success of efforts to address drug issues. As the UNGASS demonstrated, strong civil society voices and organizations working with Member States and UN agencies can favourably affect the development of global drug policy within the UN and facilitate input from a broad range of experts. Given their engagement in affected communities, civil society

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[82] Youth Affairs Council of Victoria (AUS) (2004), *Consulting Young People on their Ideas and Opinions: A Handbook for Organisations Working with Young People*, (Melbourne: State of Victoria), http://www.youthcoalition.org/wp-content/uploads/Consulting+Young+People+About+Their+Ideas+and+Opinions.pdf

[83] Rainbow Health Ontario (2015), *LGBT Drug Use and Harm Reduction Fact Sheet,* https://www.rainbowhealthontario.ca/resources/rho-fact-sheet-lgbt2sq-people-drug-use-harm-reduction/.

[84] Malakieh J. (2018), *Adult and youth correctional statistics in Canada, 2016/2017*, (Ottawa: Statistics Canada), https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54972-eng.htm

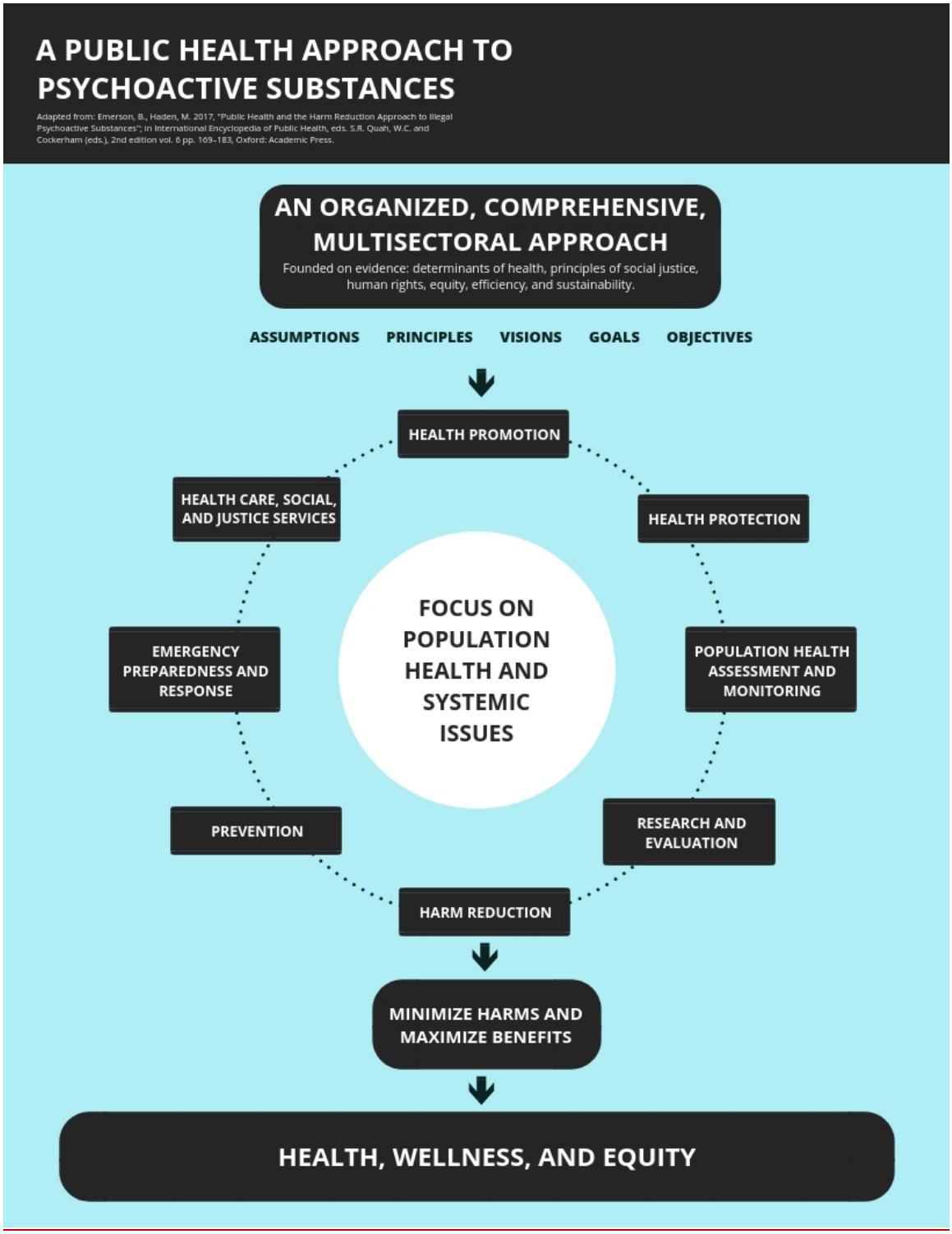
[85] *Ibid.*

[86] Smith, C. (2009). *Engaging People with Lived Experience for Better Health Outcomes: Collaboration with Mental Health and Addiction Service Users in Research, Policy, and Treatment*, https://www.researchgate.net/publication/260589695_Engaging_People_with_Lived_Experience_for_Better_Health_Outcomes_Collaboration_with_Mental_Health_and_Addiction_Service_Users_in_Research_Policy_and_Treatment.

organizations have unique and valuable contributions to make to these debates, to knowledge translation to the public and to the implementation of policy and program on the ground.

Therefore, we urge Canada to continue to include and support the participation civil society (including Indigenous peoples, youth, people who use drugs and communities particularly affected by problematic drug use and by drug policies) on the official Canadian delegation to key international drug policy meetings, including the CND.

Appendix A: Public Health Approach to Psychoactive Substances[87]



[87] From: Emerson, B. and Haden, M. (2017), *Public Health and the Harm Reduction Approach to Illegal Psychoactive Substances* in International Encyclopedia of Public Health, eds. S.R. Quah, W.C. and Cockerham (eds.), 2nd edition vol. 6 pp. 169–183. (Oxford: Academic Press). Used with permission.

Appendix B - Contributors

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