

Canadian Students for Sensible Drug Policy, Centre on Drug Policy Evaluation, and HIV Legal Network-NGO-Canada-session

Protecting Children from Drugs and Drug Policy in Canada

Thematic Additional Submission to the Committee on the Rights of the Child

on the List of Issues in Relation to the Combined Fifth and Sixth Reports of Canada

April 15, 2022

Introduction

Canadian Students for Sensible Drug Policy (CSSDP) is a grassroots network of youth and students who are concerned about the negative impact drug policies have on individuals and communities. CSSDP considers drug use a health and human rights issue rather than a criminal-legal issue, and advocates for evidence-based responses to reduce and prevent harms associated with drug use and drug criminalization. CSSDP engages youth of all ages, including those in high school (between the age of 14 and 18), through educational harm reduction materials. 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 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 in Toronto, Canada. The HIV 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 its inception, the HIV Legal Network has advocated for drug policies that uphold the human rights of people who use drugs, including those who are in prison. We are grateful for the opportunity to make this thematic additional submission on drugs and drug policy to the Committee on the Rights of the Child providing comments on the list of issues in relation to the combined fifth and sixth reports of Canada.

Violations of the Convention on the Rights of a Child

As the only explicit mention of narcotic drugs and psychoactive substances in international human rights law, Article 33 of the Convention on the Rights of a Child (Convention) states, "States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties." As interpreted by the Committee on the Rights of the Child and in the International Guidelines on Human Rights and Drug Policy, appropriate measures for protecting children include the development of accessible and child-sensitive harm reduction services and drug dependence treatment, information for children about drugs that is "accurate and objective," as well as refrain from criminalizing children because of their drug use or possession of drugs for personal use.

In this submission, we will emphasize that drug prohibition and criminalization have failed to be appropriate measures for protecting children, including children who use drugs, thus violating Article 33 of the Convention. We will also highlight violations to, and relevant recommendations for addressing, Articles 2, 6, 9, 12, 24, 28, and 29 of the Convention.

List of Issues 10(b): Results of monitoring of the use of psychostimulant drugs among children, in particular the findings of the 2017 review and any other reviews that might have been undertaken since that time

Published in 2017, the Children’s Health Policy Centre conducted an evidence review on mental health disorders among children, including those associated with psychostimulant use. Specifically, the review noted that childhood mental health disorders – including substance use disorders – are an increasing problem and are often rooted in avoidable causal adversities, like loss of parents and families, and are worsened by inadequate public policies and services (e.g., concerning child protection, healthcare, education, social welfare), all of which constitute violations of children’s rights. As elaborated below, the criminalization of activities related to drug use and an unregulated drug supply cause adversities – such as separation from families due to child apprehension orders or incarceration, or loss of loved ones due to overdose – that can underlie childhood mental disorders, and decriminalization and legal regulation policies would more adequately address children’s rights. An immense body of evidence demonstrates that the continued overwhelming emphasis on drug prohibition – from policing to prosecution to prisons – fails to achieve its stated goals and has caused immense harms. The UN Office on Drugs and Crime’s World Drug Reports have consistently identified an increase in both drug supply and demand year to year, demonstrating that the current system of prohibition has failed to achieve its goals of reducing the availability and consumption of controlled substances. Moreover, criminalized drug possession is one of the main factors driving both individual and systemic stigma and discrimination affecting those who use drugs. This stigma and discrimination directly impede access to housing, child custody, employment, and health and social services, contribute to epidemics of preventable illness and death including HIV, HCV, and other infections, as well as overdose, and perpetuate widespread human rights violations, including violations of children’s rights to life and to the highest attainable standard of health, as enshrined in Articles 6 and 24, respectively, of the Convention. Importantly, drug use and the commission of drug offences are often a justification for taking children into state custody and separating them from their families, contributing to an overrepresentation of Indigenous, Black, and racialized children in state care and constituting a violation of Article 9 of the Convention, which requires States to ensure that a child shall not be separated from their parents against their will, except when such separation is necessary for the best interests of the child. A growing number of UN entities and human rights experts have expressed support for decriminalization, including in the UN system common position on drugs endorsed by all 31 UN agencies, as well as the International Guidelines on Human Rights and Drug Policy, which explicitly calls for decriminalization of children who use drugs as noted above. 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 for Canada. Moreover, Health Canada’s Expert Task Force on Substance Use recommended “Health Canada end criminal penalties related to simple possession.” Provincial and municipal 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, demonstrating recognition that drug criminalization is a failed strategy, though children have in some instances been excluded from those requests. Despite the evidence base and growing calls for decriminalization, Canada has not decriminalized drug possession, thus failing to adequately protect children and violating Articles 6, 9, 24, and 33 of the Convention.

Evidence has repeatedly shown that conventional approaches to drug policy, particularly supply reduction efforts, have been ineffective in reducing the accessibility of drugs among children. By allowing governments to set age restrictions, legal regulation could be more effective than prohibition at preventing the purchase of drugs by children and restricting their current unfettered accessibility. Reflecting this priority, “keeping cannabis out of the hands of youth” is a primary aim of the Cannabis Act, which created a strict legal framework for non-medical cannabis markets in Canada. While different substances will require different regulatory measures, legal regulation could also more effectively limit children’s access to drugs other than cannabis and would thus be a more appropriate measure than prohibition for protecting children.

The current system of prohibition has failed to protect children from the dangers of an adulterated, unregulated drug supply, thus contravening children’s rights to life and to the highest attainable standard of health, pursuant to Articles 6 and 24 of the Convention. Canada is facing an unprecedented drug poisoning epidemic, yet its dominant approach to drugs of criminal prohibition continues to undermine an effective response to this national “public health crisis.” Between January 2016 and September 2021, nearly 27,000 people in Canada died from

opioid toxicity, a tremendous loss of life that affects countless families and children across the nation. Children who use drugs have been lost to overdose, as available data indicates that between 2018 and September 2021, at least 239 people aged 0 to 19 died from opioid toxicity in Canada, and this number will continue to rise without profound changes in course.

Although the toxic drug supply is primarily responsible for the dire number of overdose fatalities, the unregulated market is driven by Canada's long-standing policy of criminalizing drugs and those who use them. The emergence of highly potent opioids in the drug supply can be understood by the "Iron Law of Prohibition," which dictates that as law enforcement becomes more intense, the potency of prohibited substances increases. Moreover, the observed displacement/replacement effect indicates that the scheduling of substances is routinely followed by the emergence of new substances often posing greater harms from consumption. Drug prohibition forces those who use drugs to rely on a poisoned unregulated supply, subjecting them to an increased risk of overdose, and failing to adequately protect children. Reflecting wider international calls for the legal regulation of prohibited drugs, Health Canada's Expert Task Force on Substance Use recommended "the Government of Canada immediately begin a process of legislative change to bring the Controlled Drugs and Substances Act (CDSA), the Tobacco and Vaping Products Act (TVPA), the Cannabis Act, and any other relevant federal legislation under a single public health legal framework with regulatory structures that are specific to different types of substances." Nevertheless, Canada has yet to engage in the legalization and regulation of controlled substances and has therefore failed to sufficiently protect children from accessing drugs, as well as to protect children from the harms of a poisoned unregulated drug supply despite worsening rates of overdose, therefore violating Articles 6, 24, and 33 of the Convention.

List of Issues 12(b): Harmonize curricula on sexuality education among provinces and territories, and address the significant increase in HIV cases among adolescents

Sexual health education within Canada has been approached through the framework of harm reduction, promoting delayed introductions to sexual intercourse, risk reduction, reduced unwanted pregnancy, increased use in protection, and increased contraception use and contraception knowledge. These curricula approaches have fostered increased awareness and knowledge around sexuality, HIV, STIs, and transmission. Such harm reduction approaches contrast abstinence and fear-based approaches towards sexual health education, minimizing the increased risk of psychological and physical harm, and violations of Articles 6 and 24 of the Convention on rights to life and to the highest attainable standard of health for students who do not have access to evidence-based knowledge regarding sexual health education. Yet inconsistencies within sexual health education curricula, as well as a lack of a concrete commitment to harmonized, nationwide harm reduction-based drug education programs, impede children's rights to education – as enshrined in Articles 28 and 29 of the Convention – around risk minimization with regards to engaging in sexual activity and drug use.

A non-judgmental, evidence-based approach to sexual health education must include both drug, and in turn, harm reduction education. A Canadian study on street-involved children highlighted that there are overlapping risks regarding sexual activity and substance use and that intoxication can lead to unsafe, unwanted, as well as more frequent sexual activity – all of which risks increased transmission of HIV. In 2019, 38.4% of women who were diagnosed with HIV within Canada had contracted it via the use of non-sterile injection equipment, while 23.4% of HIV diagnoses among women were youth aged 15 to 29. 14.6% of new HIV cases among men were linked to the use of non-sterile drug injection equipment, and 27% of these diagnoses were among youth aged 15 to 29. Although further disaggregated data is unavailable, children aged 15 to 18 remain at high risk of infection due to lack of harm reduction-based drug education within sexual health curricula, an approach that fails to protect children and therefore violates Article 33 of the Convention.

Such risks of harms disproportionately impact sexual and gender minority children. Factors contributing to higher rates of drug use within sexual and gender minorities include ongoing stress due to stigmatization, bullying, isolation and exclusion, and abuse. With insufficient access across Canada to harm reduction-based, LGBTQ2A+ inclusive, sexual health and drug education, sexual and gender minority children are disproportionately harmed, violating Article 2 of the Convention, which prohibits discrimination of any kind.

LGBTQ2A+ inclusive sexual health and drug education is mutually dependent, not only in the prevention of HIV transmission, but in avoiding the creation of harmful environments for children with regards to sexual activity and drug use.

Without harmonized, harm reduction-based, and LGBTQ2A+ inclusive drug education curricula across all provinces and territories, Canada is violating Articles 2 and 6, Article 24, requiring States to provide children with knowledge of child health and to develop preventive health care, Article 28, recognizing the right of the child to education, Article 29, requiring such education to enable the child to develop their “mental and physical abilities to their fullest potential” and to develop their “respect for human rights and fundamental freedoms,” and Article 33 of the Convention. In order to protect children from the harms sometimes associated with drugs, a non-judgmental, realistic, and evidence-based drug education approach must be implemented.

List of Issues 13(c): Steps taken to reduce the overrepresentation of Indigenous and African Canadian children in the criminal justice system

Canada’s drug control framework is rooted in, and reinforces, racism and colonialism. Black and Indigenous communities in Canada are disproportionately charged, prosecuted, and incarcerated for drug offences. 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. In the years preceding the legalization of cannabis in Canada, for example, studies of youth between the age of 12 and 17 accused of cannabis possession in Ontario found that Black youth were more likely to be charged and less likely to be cautioned than white youth and youth from other racial backgrounds. 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 possession offences), Black (and “Middle Eastern”) youth in Peel Region, Ontario continue to be significantly overrepresented in cannabis possession charges.

As detailed in section III above, the criminalization of drug possession has resulted in profound harms to children, fueling stigma and discrimination, family separation, and HIV and HCV infections and overdose, in violation of Articles 6, 9, 24, and 33 of the Convention. Moreover, drug prohibition perpetuates anti-Black and other racism, with Black, Indigenous, and racialized communities subject to racial profiling, discriminatory surveillance, and arrest, a violation of Article 2 of the Convention prohibiting discrimination of any kind, including on the basis of “race, colour...national, ethnic or social origin.”

Recommendations

To address these harms and human rights violations of children and youth who use drugs, we urge the Committee on the Rights of the Child to make the following recommendations to Canada:

Decriminalize the possession of all drugs 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 children and youth who use drugs – a practice that will have a disproportionate impact on Black, Indigenous, and other marginalized communities.

Support the expansion of harmonized, harm reduction-based, and LGBTQ2A+ inclusive sexual health and drug education across all provinces and territories within Canada.

Expand evidence-based programs to prevent and reduce the harms of repressive drug policies, including low-barrier treatment for children and youth as well as safe supply measures (i.e., safe alternative sources of drugs to the contaminated, unregulated drug supply).

Bring the Controlled Drugs and Substances Act (CDSA), the Tobacco and Vaping Products Act (TVPA), the Cannabis Act, and any other relevant federal legislation under a single public health legal framework with regulatory structures that are specific to different types of substances.

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.”

Ensure and support the full involvement of organizations and networks of children and youth who use drugs, in the elaboration, implementation, and evaluation of drug policy and services for people who use drugs. This is line with Article 12 of the Convention, which protects children’s right to freely express their views in all matters that affect them, and 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” as an integral element of the human right to meaningful participation in public life.