



## Submission to the Citizens' Assembly on Drugs Use

30 June 2023

### Introduction

Amnesty International (AI) Ireland submits the following comments to the Citizens' Assembly on Drugs Use convened by the Government "to consider the legislative, policy and operational changes the State could make to significantly reduce the harmful impacts of illicit drugs on individuals, families, communities and wider society, and to bring forward recommendations in this regard".<sup>1</sup> The area of States' drug laws and policies is of growing global concern to AI as it straddles many intersecting areas of marginalisation, discrimination and human rights abuses and violations on which the organisation works globally.

For this reason, AI Ireland welcomes the convening of this Citizens' Assembly. AI Ireland was signatory to a joint open letter authored by Senator Lynn Ruane in March 2022 setting out the deficits in the Irish State's approach to drug use, and calling on the Government to establish its then promised Citizens' Assembly.<sup>2</sup> AI Ireland has also directly and publicly called on the Irish Government to decriminalise the possession of drugs for personal use.

The comments and recommendations made in this submission for the most part do not apply specifically or exclusively to Ireland, but to all States, and we hope they will be of use to the Citizens' Assembly in its important deliberations.

### Summary

AI recommends a sustained paradigm shift towards States' drug control policies that are grounded on the protection of public health and human rights. While the terms of reference mention "the harmful impacts of illicit drugs on individuals, families, communities and wider society", of concern too is the impact of States' drugs control laws, policies and enforcement. Globally, punitive approaches have demonstrably failed to decrease the use and availability of drugs, and instead exacerbated the risks and harms of using drugs and the violence associated with the illicit trade. In Ireland, criminalisation of possession of drugs for personal use has destroyed the lives of many people and their families, yet not addressed the problems associated with drug use. It also illustrates the importance of distinguishing drug use from drug dependence.

It is time to move from prohibition and criminalisation models to effective and evidence-based prevention, information and harm reduction; with voluntary treatment and rehabilitation services that are provided where medically indicated on a non-discriminatory basis. Stigma and discrimination associated with drug use and drug dependence – and intersectional factors that lead to the marginalisation associated with the drug trade and supply chain - must also be identified and addressed.

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<sup>1</sup> At <https://citizensassembly.ie/assembly-on-drugs-use/terms-of-reference/>

<sup>2</sup> Available at [https://issuu.com/senatorlynnruane/docs/open\\_letter\\_-\\_ca\\_on\\_drugs.docx](https://issuu.com/senatorlynnruane/docs/open_letter_-_ca_on_drugs.docx), 28 March 2022.

## **Global background of serious human rights violations**

Over the years, multiple national, regional and international human rights mechanisms and civil society organisations, including AI, have documented the numerous human rights violations taking place across the world as a direct consequence of the implementation of repressive drug control laws and policies.<sup>3</sup> Such global violations include the use of the death penalty for drug-related offences, police abuses, discrimination, extrajudicial executions, torture and other ill-treatment, arbitrary detentions, inhumane conditions of detention and violations of economic, social and cultural rights, including of the right to health.<sup>4</sup> In some instances, as documented by AI, certain abuses committed as part of the “war on drugs” amount to crimes against humanity.<sup>5</sup>

While drugs can pose risks to individuals and societies, the heavy reliance on criminal laws, repressive policies and other measures based on prohibition has resulted in widespread human rights violations and abuses. The global “war on drugs” has effectively been a war on people, in particular the poorest and most marginalised sectors of society.

Moreover, the decades of heavy reliance on criminal law and repressive policies has failed to decrease the use and availability of drugs, and has in fact exacerbated the risks and harms of using drugs and the violence associated with illicit markets.<sup>6</sup> In particular, the prohibition and criminalisation of drugs has led to more harmful drugs of unknown quality being sold and riskier methods of drug use being sought. This has also contributed to significant increases in transmissions of HIV, hepatitis C and other blood-borne diseases.<sup>7</sup> At the same time, violence and corruption are now rife globally as a direct result of the expansion of illicit drug markets, which is having a particularly dire impact on children and young people who are easily exposed to organised crime, armed violence and drug enforcement operations.<sup>8</sup>

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<sup>3</sup> United Nations Development Program and International Centre on Human Rights and Drug Policy (University of Essex), “International guidelines on human rights and drug policy”, March 2019. See also, International Drug Policy Consortium, “Taking stock: A decade of drug policy”, April 2016.

<sup>4</sup> Amnesty International, “They just kill: Ongoing extrajudicial executions and other violations in the Philippines’ ‘war on drugs’”, (ASA 35/0578/2019), 8 July 2019; Amnesty International, “If you are poor, you are killed: Extrajudicial executions in the Philippines’ ‘war on drugs’” (ASA 35/5517/2017), 31 January April 2017; Amnesty International, “Criminalizing pregnancy: Policing pregnant women who use drugs in the USA” (AMR 51/6203/2017), 23 May 2017; Amnesty International, “You killed my son: Homicides by military police in the city of Rio de Janeiro” (AMR 19/2068/2015), 3 August 2015; Amnesty International, “Make him speak by tomorrow: torture and other ill-treatment in Thailand” (ASA 39/4747/2016), 28 September 2016; Amnesty International, “Out of control: torture and other ill-treatment in Mexico” (AMR 41/020/2014), 4 September 2014; Amnesty International: “Shadow of impunity: torture in Morocco and Western Sahara” (MDE 29/001/2015), 19 May 2015; Amnesty International, “Treated with indolence: the state’s response to disappearances in Mexico” (AMR 41/3150/2016), 14 January 2016; Amnesty International, “Changing the soup but not the medicine?: Abolishing re-education through labour in China” (ASA 17/042/2013), 17 December 2013; Amnesty International, “World Day Against Death Penalty: Not the solution to drug-related crime” (ACT 50/2634/2015), 10 October 2015.

<sup>5</sup> Amnesty International, “If you are poor, you are killed: Extrajudicial executions in the Philippines’ ‘war on drugs’” (ASA 35/5517/2017), 31 January April 2017; Amnesty International, “They just kill: Ongoing extrajudicial executions and other violations in the Philippines’ ‘war on drugs’”, (ASA 35/0578/2019), 8 July 2019.

<sup>6</sup> United Nations Office on Drugs and Crime. World Drug Report 2018. New York, 2018; Joanne Csete et al. “Public Health and international drug policy” in The Lancet. April, 2016.

<sup>7</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 26; Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights”, 4 September 2015, UN Doc. A/HRC/30/65, para. 26

<sup>8</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para. 97.

This global context has led AI to call for all States' drug control policies to be based on human rights and public health, instead of relying on the traditional punitive approaches intended to suppress the use and availability of drugs but that in reality cause immense harm.

### **Enable the participation of affected people and communities**

The prohibition and criminalisation of drugs has disenfranchised and excluded those most affected by drug control policies, who are often left out of the design and implementation of such policies.<sup>9</sup> In 2016, the UN General Assembly Special Session on drugs specifically recognised the right of those affected by drug laws and policies to be involved in their formulation and implementation".<sup>10</sup> In order to effectively guarantee the meaningful participation of affected people and communities in the design, implementation, monitoring and evaluation of drug control laws and policies, AI urges States to put in place specific mechanisms to involve people who use drugs and other affected communities, as well as civil society organisations and experts in health, social services and other relevant fields.

### **Focus on meaningful policy objectives**

Drug control policies should be understood by States as a means to achieve policy objectives that include the protection of the right to the highest attainable standard of physical and mental health, ensuring equality and non-discrimination, and avoiding the violence associated with illicit markets. In doing so, drug policies should address the underlying socio-economic factors that increase the risks that lead people to engage in drug use leading to dependence or other aspects of the drug trade: these include poverty, denial of education, unemployment, lack of adequate housing, ill-health and discrimination.

This also requires looking at the wider drug supply chain. Addressing the root causes of drug-related harm requires States to put in place a wide set of gender-sensitive and holistic socio-economic protection measures tackling the different stages of the drug trade. While historically there has been more analysis and policy development to reduce harms related to the use of drugs, it is also fundamentally important to integrate human rights into policies concerning the other stages of supply of drugs, from cultivation and production to distribution.

In order to address the root causes that increase the risks from using drugs and lead people to engage in the drug trade, States should put in place measures to tackle social inequalities by promoting a social justice perspective and advancing economic, social and cultural rights. In particular, State authorities must ensure that drug control policies seek to overcome structural sources of vulnerability, stigma and discrimination that affect people who engage in the drug trade, particularly at the lower tiers, and especially women, children and young people, and those belonging to marginalised and disadvantaged communities.

### **Put the protection of health and human rights at the centre**

States must put their obligations to guarantee the right to health at the centre of drug control policies, and redirect efforts and resources towards the realisation of people's human rights, including ensuring the right to the highest attainable standard of health of people who use drugs and the rights of other groups that have been affected by punitive drug control policies.<sup>11</sup>

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<sup>9</sup> Report of the Working Group of Experts on People of African Descent, Visit to the United States of America, UN Doc. A/HRC/15/18 (2010), para. 47; Committee on the Elimination of Racial Discrimination, Concluding Observations: United States of America, UN Doc. CERD/C/USA/CO/7-9 (2014), paras. 11, 20.

<sup>10</sup> UN General Assembly, Resolution S-30/1: Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem, UN Doc. A/RES/S-30/1 (2016), preamble, para. 1(q).

<sup>11</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255.

Health and social services available for people who use drugs must be evidence-based and gender-sensitive. As recommended by the World Health Organisation (WHO) and the UN Office on Drugs and Crime (UNODC), these services must comply with human rights law and standards, and should include prevention, information, harm reduction, and voluntary treatment and rehabilitation services where medically indicated and on a non-discriminatory basis, including in prisons and other situations where people are deprived of their liberty.<sup>12</sup> States must ensure such services are available, acceptable and easily accessible to everyone on a non-discriminatory basis, and of good quality.<sup>13</sup> This requires paying particular attention to the needs of the most marginalised, and to the specific needs of women, children and adolescents, and people with disabilities.<sup>14</sup> In this sense, harm reduction and treatment services must provide suitable environments for women and girls who use drugs, including by providing integrated sexual and reproductive healthcare, information and services, and childcare facilities; and should be respondent to other gender-specific needs.<sup>15</sup>

### **Implement evidence-based prevention campaigns**

AI encourages States to implement effective preventive measures to address drug-related problems, particularly highlighting the need to provide accurate information and education through non-stigmatising language and attitudes, which are important elements to fulfil States' obligations under the right to health.<sup>16</sup> However, prevention campaigns intended to "keep drugs away from children" have proven to be ineffective at curbing the levels of drug use and may have created barriers to the provision of healthcare by exacerbating the social stigmatisation and demonisation of people who use drugs.<sup>17</sup> Worryingly, according to UNODC data, the majority of countries continue to favour the implementation of this type of campaign instead of family and community-based campaigns that have proven to be more effective.<sup>18</sup> As recommended by the WHO and UNODC, prevention campaigns should include a range of different interventions and policies based on the age of the target group, the level of risk, and the environment in which the campaign will be implemented.<sup>19</sup> In this sense, it is important that efforts towards preventing drug-related harms incorporate evidence-based campaigns to prevent or delay children's first use of drugs for non-medical purposes; but also campaigns targeting people who already use drugs to avert drug dependence and other harms that may arise from the use of drugs, which require different strategies and approaches.

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<sup>12</sup> World Health Organisation and United Nations Office on Drugs and Crime, International Standards for the treatment of drug use disorders. UN Doc. E/CN.7/2016/CRP.4. March, 2017.

<sup>13</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12.

<sup>14</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, UN Doc. A/66/254; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32.

<sup>15</sup> Open Letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the UN General Assembly Special Session on the Drug Problem (UNGASS), which will take place in New York in April 2016, 7 December 2015.

<sup>16</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Art. 12), 11 August 2000, UN Doc. E/C.12/2000/4, para. 16.

<sup>17</sup> Dan Werb, et al. (2011), 'The effectiveness of anti-illicit-drug public-service announcements: A systematic review and meta-analysis', *Journal of Epidemiology & Community Health*, October 2011..

<sup>18</sup> Commission on Narcotic Drugs (20 December 2017), Action taken by Member States to implement the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Report of the Executive Director. UN Doc. E/CN.7/2018/6.

<sup>19</sup> World Health Organisation and United Nations Office on Drugs and Crime, International Standards on drug use prevention. Second updated edition, 2015, pp. 50-51.

AI therefore recommends States to implement public educational programmes and information campaigns that incorporate harm reduction information and are based on scientific evidence that accurately describe the effects of drugs, including the risks both to people who use drugs and to others. Furthermore, such programmes should involve efforts specifically tailored for children and young people, both in educational settings and in environments outside of school such as street and party scenes, aimed at empowering them to make informed decisions about their own conduct and provide them with information about where to find help if they require it.<sup>20</sup>

### **Ensure comprehensive harm reduction interventions**

Harm reduction is a broad term that refers to policies, programmes and practices that aim primarily to reduce the adverse health, social and economic consequences of the use of licit and illicit drugs without necessarily reducing an individual's level of use. Importantly, harm reduction services have been developed for different types of drugs, not only for opioids. While Drug Consumption Rooms (DCRs), Opioid Substitution Therapy (OST) and Needle and Syringe Programmes (NSP) remain crucial for the protection of the right to health of people who inject drugs, other harm reduction services have equally proven to be successful in reducing the risks and harms associated with other type of drugs, such as drug-checking services, distribution of safer smoking kits, integration of harm reduction into nightlife settings (for example chill-out spaces and hydration points), peer-led information sharing and the promotion of non-injecting routes for the administration of drugs and other overdose prevention practices.<sup>21</sup>

AI also recommends a focus on the crucial role that law enforcement agencies can play in promoting individual and public health when law enforcement strategies are designed to prevent the harms of drugs and drug markets to individuals and communities, rather than simply aiming to reduce or eradicate drugs or drug markets. Instead, in some countries, the criminalisation of drug-related conduct has led to prohibitions on harm reduction programmes or barriers imposed to users accessing them, arguing that they encourage the use of drugs.<sup>22</sup> Some countries have criminal laws that prohibit carrying needles, syringes or other injecting equipment and these items have also been used as evidence of drug use or possession in court.<sup>23</sup> Such laws can have a chilling effect, preventing people who use drugs from seeking healthcare, information or tools that may help them to avoid infection and other serious health consequences. However, even in the absence of such laws, policing practice can be the problem if directed at suppressing use of drugs or arrest for drug possession for personal use. For instance, policing in the surroundings of facilities that provide health and harm reduction services to people who use drugs has become an additional barrier in some countries to the effective realisation of the right to health.<sup>24</sup>

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<sup>20</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para 101-102.

<sup>21</sup> See for example Harm Reduction International, "Harm reduction for stimulant use", April 2019. Available at <https://www.hri.global/files/2019/04/28/harm-reduction-stimulants-coact.pdf>

<sup>22</sup> Committee on Economic, Social and Cultural Rights (11 June 2014), Concluding Observations: Ukraine, UN Doc. E/C.12/UKR/CO/6, para. 24; Committee on Economic, Social and Cultural Rights (1 June 2011), Concluding Observations: Russian Federation, UN Doc. E/C.12/RUS/CO/5, para. 29; Committee on Economic, Social and Cultural Rights (24 June 2014), Concluding Observations: Lithuania, UN Doc. E/C.12/LTU/CO/2, para. 21.

<sup>23</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 21; International Harm Reduction Association, The Global State of Harm Reduction: Towards an integrated response. July, 2012.

<sup>24</sup> Joanne Csete et al., "Public Health and international drug policy" in The Lancet. April, 2016, pp. 1442.

Civil society organisations have documented the positive impact of drug policies designed to promote constructive engagement and partnerships between law enforcement officials and health providers around health and other human rights issues.<sup>25</sup> Such policies should include approaches to law enforcement that support the effective operation of harm reduction services such as needle and syringe programmes or drug checking services, equipping police agencies for the provision and distribution of naloxone (a medicine that counters the effects of an opioid overdose), and other harm reduction measures.<sup>26</sup>

Law enforcement agencies should also be trained in harm reduction (and of course should not target health facilities, supervised drug-consumption rooms or needle and syringe programmes as a strategy for drug enforcement operations) and should desist from practices that undermine the right to health, including the seizure or destruction of injection equipment.<sup>27</sup>

### **Provide access to treatment and rehabilitation services in line with human rights**

Treatment for drug dependence should always involve the voluntary participation of individuals with their full, free and informed consent as in other areas of healthcare: it would otherwise contravene the individuals' right to health.<sup>28</sup> Accordingly, WHO guidelines too state that drug treatment should not be compulsory and should only be undertaken with informed consent.<sup>29</sup>

In this regard, in Ireland, it is of concern that “the development of a Health Diversion Scheme as a new approach for cases of personal possession of drugs” is underway in a context where it remains a criminal offence to be in possession of drugs for personal use, with a potential prison sentence of 12 months.<sup>30</sup> Also, activities set out in the new National Drugs Strategy Strategic Action Plan 2023 – 2024 under Strategic Priority 5 ‘Promote alternatives to coercive sanctions for drug-related offences’ are to “[o]versee and support the implementation of the Health Diversion Programme (HDP)” and “[e]valuate the Dublin Drug Treatment Court and recommend the future direction of Drug Treatment Courts nationwide”.<sup>31</sup>

People should be faced with a choice of either being found guilty of a criminal offence for drug use (and with a possible sentence of imprisonment) or entering drug treatment. Using the threat of possible conviction and imprisonment through the criminal justice system to direct people into healthcare is an abuse of their human rights: healthcare must always be provided on a voluntary, non-discriminatory basis, and based on free and informed consent.

This misguided approach also illustrates how important it is that drug control policies distinguish the use of drugs from dependence on drugs, and avoid the presumption that all drug use is inherently dangerous and leads to dependence. This is essential to ensure that

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<sup>25</sup> Marc Krupanski, “Police & Harm Reduction: How law enforcement can advance public safety, public health, and public confidence”, Open Society Foundations. July, 2018.

<sup>26</sup> Joanne Csete et al. “Public Health and international drug policy” in *The Lancet*. April 2016, pp. 1441-1442.

<sup>27</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, paras. 69, 76.

<sup>28</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/64/272, para. 93.

<sup>29</sup> World Health Organisation, “Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence”, 2009, p. 10, 14.

<sup>30</sup> See [https://www.drugs.ie/drugs\\_info/about\\_drugs/drugs\\_and\\_the\\_law/](https://www.drugs.ie/drugs_info/about_drugs/drugs_and_the_law/) (managed by the HSE National Social Inclusion Office, consulted 28 June 2023).

<sup>31</sup> See <https://www.gov.ie/en/publication/4e5630-reducing-harm-supporting-recovery-2017-2025/#the-strategic-action-plan-for-the-national-drugs-strategy-2023-2024>, (Government press release, 29 June 2023, is at <https://www.gov.ie/en/press-release/34936-minister-naughton-publishes-the-strategic-action-plan-2023-2024-for-the-implementation-of-the-national-drugs-strategy/>).

treatment is only provided when medically indicated.<sup>32</sup> According to the UN, only 10 per cent of all people who use drugs develop a drug dependence that could require medical treatment.<sup>33</sup> Even where people would benefit from medical treatment, they should not be coerced – directly or indirectly - into undergoing treatment.

Additionally, states must ensure that their legal framework guarantees compliance with human rights within drug dependence treatment and rehabilitation services. The UN Special Rapporteur on the right to health and the UN Special Rapporteur on torture and other ill-treatment have analysed the egregious human rights violations that have occurred in the context of some “treatment” services around the world, and have urged States to put an end to compulsory treatment programmes that are ineffective and contrary to human rights.<sup>34</sup> Moreover, the Special Rapporteur on the right to health has recommended States to prioritise health care and social support in community settings for the treatment and rehabilitation of drug dependence, rather than in institutions.<sup>35</sup>

States should also pay particular attention to the need to uphold children’s right to informed consent if they require drug treatment and rehabilitation. Any medical treatment for children - including treatment and rehabilitation for a drug dependence - must be based on their informed consent in line with their evolving capacities and giving due weight to their views according to their age and maturity.<sup>36</sup> Decisions for children to undergo treatment or rehabilitation for drug dependence should always ensure their meaningful participation and respect their right to give or withhold consent in line with their evolving capacities.<sup>37</sup>

### **Address stigma and discrimination**

Current drug policies around the world have exacerbated and justified discriminatory practices against people who use drugs, including in the fields of health, housing, education and employment; and this can become a particular deterrent for people who use drugs to seek medical attention.<sup>38</sup>

Drug control laws and policies have also had a disproportionate impact on the poorest and most marginalised sectors of society, often intersecting with other forms of discrimination against women and girls,<sup>39</sup> children and young people, racial, ethnic and other minorities, people living with HIV, LGBTI people, sex workers<sup>40</sup>, people living in poverty, those who are homeless, people with disabilities and people deprived of their liberty, among others.

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<sup>32</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 37.

<sup>33</sup> United Nations Office on Drugs and Crime. World Drug Report 2018. New York, 2018, p. 7.

<sup>34</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 30-39; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, UN Doc. A/HRC/22/53, para. 40-44.

<sup>35</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/HRC/38/36, para. 98(d).

<sup>36</sup> Articles 5 and 12(1), UN Convention on the Rights of the Child.

<sup>37</sup> Committee on the Rights of the Child, General Comment 12: The right of the child to be heard, 1 July 2009, UN Doc. CRC/C/GC/12, para. 98-100.

<sup>38</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 19.

<sup>39</sup> See Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, UN Doc. CEDAW/C/GC/28, 16 August 2010, para. 18.

<sup>40</sup> For instance, AI’s research on the human rights of sex workers in Ireland found an interplay between homelessness due to the housing crisis, drug use and sex work, with one sex worker interviewee then living in a homeless hostel saying: “Homelessness is one of the biggest issues we have in Ireland... For someone to become homeless, they automatically turn to heavy drugs to numb themselves, having to



States have an obligation to address all forms of discrimination, by amending laws and policies that make unjustified distinctions and discriminate against people who use drugs, and monitoring the impact of laws and policies to identify and eliminate indirect discrimination. In particular, the UN Commission on Narcotic Drugs (CND) has encouraged States to promote “non-stigmatising attitudes in the development and implementation of scientific evidence-based policies related to the availability of, access to and delivery of health, care and social services for drug users”.<sup>41</sup> AI recommends that States conduct an analysis of the specific impact that stigma and discrimination have on people who use drugs; and encourages States to develop and implement campaigns, in consultation with people who use drugs, to counter current stereotypes and to raise awareness throughout society of the rights of people who use drugs. States should pay specific attention to the stereotyped and gender-biased views about drugs that disproportionately affect women and girls, and promote gender-sensitive policies that respond to the differentiated needs, risks and harms to women and girls, transgender people and non-binary individuals.

### **Decriminalise possession of drugs for personal use**

Around the world, the blanket prohibition and criminalisation of drugs has led governments to punish, stigmatise and demonise people with the aim of stopping them, and deterring others, from using drugs. As evidence has shown, criminalisation of the use and possession of drugs for personal use has posed a direct threat to people’s health and wellbeing, has led to widespread human rights violations, and has failed to decrease the use and availability of drugs.<sup>42</sup> In Ireland too, as mentioned above, AI Ireland has called on the Irish Government to decriminalise the possession of drugs for personal use (and to improve health and rehabilitation services for people with substance abuse disorders, and expand the availability of safer injection centres).<sup>43</sup> As also mentioned above, the development of a new ‘health diversion scheme’ is underway in Ireland for those found in possession of drugs for personal use, focused on diverting people from the justice system to treatment services. As explained above, this approach is contrary to human rights law and standards: healthcare should be only provided on a voluntary, non-discriminatory basis, and based on informed consent. In addition, criminalising behaviours related to personal drug use could deter people from seeking help for fear of prosecution. Conversely, decriminalising people who use drugs can facilitate their accessing the health and social services that they actually need to reduce drug-related harms.

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work the streets, to sleep under a bridge, to sleep here and there. I’ve often said to myself: ‘I had to do that.’ I would have to be out of my face on drugs to live on the street.” (*“We live within a violent system.” Structural violence against sex workers in Ireland*, 25 January 2022, p6, Index No. EUR 29/5156/2022 available at <https://www.amnesty.org/en/documents/eur29/5156/2022/en/>).

Some interviewees for that research – both sex workers and health and other experts - also stressed that decriminalisation of sex work (i.e. the consensual exchange of sexual services between adults) should go hand in hand with decriminalisation of possession of drugs for personal use. Interviewees also stressed that supporting drug-using sex workers needs to be done in holistic ways that would address the complex and intersecting needs many people in these situations face.

One interviewee, Dr Austin O’Carroll a GP and founder of Safetynet Primary Care, a medical charity providing healthcare to marginalised communities, spoke about attitudes in Irish society towards people experiencing homelessness, people who use drugs and sex workers, and their intersections: “I think drug users are probably the most stigmatised... So if you’re a drug user who also is a sex worker, you know, that unfortunately will probably taint the perception of it.”

<sup>41</sup> Commission on Narcotic Drugs, Resolution 61/11: Promoting Non-stigmatizing attitudes to ensure the availability, access and delivery of healthcare and social services for drug users (2018).

<sup>42</sup> Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights”, 4 September 2015, UN Doc. A/HRC/30/65, para. 30,

<sup>43</sup> See <https://www.amnesty.ie/safer-from-harm/> and <https://www.amnesty.ie/safer-from-harm-faq/> (March 2019).



People who have been convicted of drug-related offences also face particular obstacles arising from a criminal record in obtaining employment and pursuing education, as well as potentially adverse effects on the custody of children or visitation rights, losing access to public or privately rented housing, or unreasonable restrictions in traveling abroad.<sup>44</sup>

Several international human rights mechanisms and other UN agencies have expressed their concern over the unnecessary and disproportionate use of the criminal justice system to deal with drug-related offences.<sup>45</sup> As a consequence, multiple human rights mechanisms and UN agencies have recommended that countries decriminalise the use and possession of drugs for personal use as a means of protecting public health and human rights. Among others, the Committee on Economic, Social and Cultural Rights, the UN Special Rapporteur on the right to health, and the Office of the United Nations High Commissioner for Human Rights have recommended the decriminalisation of drug use and possession for personal use as an important step towards fulfilling the right to health.<sup>46</sup> Nonetheless, despite increasing evidence that removing criminal sanctions against people who use drugs can reduce prison overcrowding, improve health outcomes, and address drug use-related stigma and discrimination,<sup>47</sup> the number of countries that have advanced the decriminalisation of drug use and possession for personal use is still low.

### **Consider advancing decriminalisation more widely**

AI further recommends that, beyond decriminalising drug use and possession for personal use, States deepen their analysis and consideration of wider decriminalisation models as a way to prevent and address the human rights impact of prohibition, including the need to accompany such reforms with an expansion of health and other social services to address the risks related to drug use.<sup>48</sup> AI believes that States should end the criminalisation of, and punishment for, the use, possession and cultivation of all drugs for personal use, including when this is done in a public space. This reform should also ensure a process to review convictions and sentences for such offences and, where appropriate, quash, commute or reduce existing convictions and/or sentences.

Additionally, decriminalisation has also been applied in some jurisdictions to other minor drug offences, such as subsistence cultivation of drug crops, transportation of small quantities of drugs (drug couriers), social-sharing of drugs with no financial gain, or selling small amounts of drugs that a person previously owned for the purpose of supporting their personal use of

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<sup>44</sup> Office of the High Commissioner on Human Rights, “Study on the impact of the world drug problem on the enjoyment of human rights”, 4 September 2015, UN Doc. A/HRC/30/65, para. 50.

<sup>45</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 62; Human Rights Committee, General Comment 35: Article 9 (Liberty and security of person), 16 December 2014, UN Doc. CCPR/C/GC/35, para. 40; Report of the Working Group on Arbitrary Detention, 30 June 2014, UN Doc. A/HRC/27/48, para. 72-73; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 January 2009, UN Doc. A/HRC/10/44, para. 55; World Health Organisation. Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations. Geneva, 2014, pp. 91; UNAIDS. HIV prevention among injecting drug users. Geneva, 2009, pp. 183,

<sup>46</sup> Committee on Economic, Social and Cultural Rights (7 October 2016), Concluding Observations: Philippines, UN Doc. E/C.12/PHL/CO/5-6, paras. 54; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 49, 62; OHCHR. Study on the impact of the world drug problem on the enjoyment of human rights. 4 September 2015. UN Doc. A/HRC/30/65, para. 61.

<sup>47</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 6 August 2010, UN Doc. A/65/255, para. 62-69.

<sup>48</sup> European Monitoring Centre for Drugs and Drug Addiction, Portugal drug report 2018, <http://www.emcdda.europa.eu/system/files/publications/8890/portugal-cdr-2018.pdf>

drugs (also known as “user-dealer”).<sup>49</sup> The criminalisation of minor, nonviolent drug-related offences has mostly affected people from poor or marginalised groups, often from racial, ethnic or other minorities, due to over-policing around their communities and their stigmatisation as people who use drugs disproportionately in comparison to the general population.<sup>50</sup> AI considers that these acts, in themselves, do not cause a direct harm to public health and their criminalisation targets behaviour that generally poses little to no risk of harm to others. Therefore, AI recommends that States consider alternatives to the criminalisation of other minor, non-violent drug-related offences that, when posing little to no risk of harm to others, prove to be unnecessary and disproportionate to any legitimate aim.

In looking at possible decriminalisation approaches and models, States should also identify and address the disproportionate impact that drug control laws and police enforcement operations have had on marginalised groups and people who face multiple and intersecting forms of discrimination, including women and girls, racial, ethnic (including members of the Traveller community in Ireland) and other minorities, children and young people, people living in poverty, sex workers<sup>51</sup> and LGBTI people.

### **Women and girls**

In the context of drug control approaches, addressing the particular risks and challenges, and discriminatory and disproportionate impacts, that women and girls face (including Transgender women and girls) requires a gendered analysis. Women and girls who use drugs face particular challenges due to their gender, including high levels of stigmatisation in the family and the community, and specific forms of gender-based violence.<sup>52</sup> In addition, there can be significant gaps in gender-sensitive harm reduction and treatment services.<sup>53</sup> Stigmatisation of drug use within services, and indeed criminalisation of possession of drugs for personal use, can particularly impede women’s or girls’ access to healthcare goods and services – including if they are pregnant - by deterring them from seeking timely healthcare.<sup>54</sup>

Also, around the world, women and girls, especially those who live in poverty, disproportionately engage in the drug trade as couriers or other low-ranking, low-paying, high-risk positions in the drug trade supply chain.<sup>55</sup> According to UN Women, women’s involvement in the drug trade is a result of their poor economic opportunities and lower political status.<sup>56</sup>

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<sup>49</sup> The Global Commission on Drug Policy, *Advancing drug policy reform: A new approach to decriminalisation*. September, 2016.

<sup>50</sup> Office of the High Commissioner on Human Rights, *Study on the impact of the world drug problem on the enjoyment of human rights*. 4 September 2015. UN Doc. A/HRC/30/65, para. 51; See also Niamh Eastwood et. al, “The colour of injustice: ‘Race’, drugs and law enforcement in England and Wales”, Stop Watch, Release and LSE. October, 2018.

<sup>51</sup> See footnote 40 above.

<sup>52</sup> See e.g. UNODC, UN-Women, WHO and INPUD, “Policy Brief: Women Who Inject Drugs and HIV” (2014) which says: “Violence against women is a critical issue that deserves special attention when considering barriers and obstacles to adequate services and support. Women who inject drugs experience high rates of intimate partner violence, which negatively affects their ability to practise safe sex and safer drug use.” (Available at [www.unodc.org/documents/hiv-aids/publications/WOMEN\\_POLICY\\_BRIEF2014.pdf](http://www.unodc.org/documents/hiv-aids/publications/WOMEN_POLICY_BRIEF2014.pdf))

<sup>53</sup> International Narcotics Control Board. *Report 2016*. New York, 2013, para. 3.

<sup>54</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, UN Doc. A/66/254, para 41.

<sup>55</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, ‘Pathways to, conditions and consequences of incarceration for women’, 21 August 2013, UN Doc. A/68/340, para 23-24.

<sup>56</sup> UN Women, “A Gender Perspective on the Impact of Drug Use, the Drug Trade and Drug Control Regimes (policy brief)”, 2014.

Guidelines produced by the WHO, UNAIDS and UNODC (reinforced by CND's resolution 55/5 of 2012) have emphasised the need to ensure comprehensive health and reproductive services for women who use drugs, including HIV-related services.<sup>57</sup> Additionally, States should ensure the availability of harm reduction and treatment services that provide suitable environments for women who use drugs, including by providing integrated sexual and reproductive healthcare, information and services; and childcare facilities that are respondent to other gender-specific needs.

### **Children and young people**

The protection of children's rights has also been compromised by States' repressive drug control policies. Children and young people across the world have been engaged at all stages of the drugs supply chain, and exposed to organised crime, sexual exploitation, violence and drug enforcement operations.<sup>58</sup> They also have been confronted with increased health risks for using drugs.<sup>59</sup> Young people living in poverty are also at greater risk of being recruited by criminal gangs and apprehended by drug law enforcement. Children and adolescents are at higher risk of drug-related health harms, while use of drugs initiated in adolescence can more often lead to dependence than during adulthood.<sup>60</sup>

However, while data relating to the use of drugs by children and young people is poor in many countries, evidence suggests that punitive responses to drugs do not deter them from using drugs, nor does such an approach significantly restrict their access to drugs.<sup>61</sup> Instead, such policies have produced additional and particular harms to them, including physical and mental health consequences.

While Article 33 of the UN Convention on the Rights of the Child provides that State Parties shall take all appropriate measures to protect children from the illicit use of drugs and to prevent the use of children in the illicit production and trafficking of drugs, this must be read in conjunction with other protections afforded by the Convention and other human rights obligations. This must include preventive and treatment programmes accessible for children, the production and dissemination of accurate and objective information with regard to the use of drugs, and the establishment of appropriate harm reduction services accessible for children and young people.

Regarding the criminal law, the UN Committee on the Rights of the Child has consistently called on States to avoid the treatment of children as criminals for their use or possession of drugs, and has recommended States not to subject children who use drugs to criminal proceedings.

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<sup>57</sup> UNODC, UN-Women, WHO and INPUD, "Policy Brief: Women Who Inject Drugs and HIV" (2014).

<sup>58</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para 97.

<sup>59</sup> Office of the High Commissioner on Human Rights, "Study on the impact of the world drug problem on the enjoyment of human rights", 4 September 2015, UN Doc. A/HRC/30/65, para. 50, 52.

<sup>60</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 4 April 2016, UN Doc. A/HRC/32/32, para. 95. See also Catherine Cook and Adam Fletcher, "Youth drug-use research and the missing pieces in the puzzle: how can researchers support the next generation of harm reduction approaches?" in *Children of the drug war: Perspectives on the impact of drug policies on young people*, International Debate Education Association, iDebate Press.

<sup>61</sup> European Monitoring Centre for Drugs and Drug Addiction, "Looking for a relationship between penalties and cannabis use", 15 November 2011, available at [www.emcdda.europa.eu/online/annual-report/2011/boxes/p45](http://www.emcdda.europa.eu/online/annual-report/2011/boxes/p45); Louisa Degenhardt et al., "Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys", in *PLoS Medicine*, July 2008; Organisation of American States, "The Drug Problem in the Americas", 2013, OEA/Ser.D/XXV.4

AI recommends that States put in place special measures to protect children from the risks and harms of drugs and drug control policies, including those stemming from the use of drugs by children and/or their parents, and from policing and other law enforcement efforts. First, States must ensure the adequate availability and accessibility of prevention, harm reduction and treatment services specifically tailored to the needs of children and adolescents, including youth-led interventions and peer-to-peer strategies. Drug-related programmes for children and adolescents should be objective and evidence-based, taking into consideration the types of drugs they use and the socio-economic factors that drive drug use.

Furthermore, States should provide children and adolescents with information in an accessible manner, including on minimising drug-related risks and harms and on where to find help if they require it. States should eliminate age barriers and parental consent requirements that limit access to HIV testing, harm reduction services and drug dependence treatment and care.

States should also have in place measures to address the human rights concerns arising from the use of drugs by parents. In order to guarantee the best interests of the child, States have an obligation to provide appropriate assistance to parents in carrying out their childcare responsibilities when needed.<sup>62</sup> This includes the duty to support parents who use drugs or have a dependence on drugs by guaranteeing a safe environment, including through, as appropriate, adequate housing, education and healthcare. States should ensure that the use of drugs is never the sole justification for the separation of a child from parental care, or for preventing reunification or for removing custody, and must ensure that the best interests of the child is a primary consideration in every decision regarding their care. In such considerations, authorities must ensure that the use of drugs or dependence to drugs is not equated with neglect or abuse.

## **RECOMMENDATIONS**

AI calls on all States, including Ireland, to adopt new models of drug control that put the protection of people's health and other human rights at the centre, and ensure that all drug laws, policies and enforcement operations are compliant with international human rights law and standards. In particular,<sup>63</sup> States should:

### **Domestic drug laws and policies**

- Refrain from implementing repressive drug laws and policies that harm rather than protect people, and repeal or substantially amend such laws.
- Put in place mechanisms to ensure that all drug control laws, policies and practices are consistent with international human rights law and standards, and ensure that these contemplate appropriate remedies when this is not the case.
- Include people who use drugs and other affected communities - as well as civil society organisations and experts in health, social services and other relevant fields - in the design, implementation, monitoring and evaluation of drug control policies that affect them.

### **Prevention**

- Follow international best practice for the design and implementation of prevention campaigns to introduce a range of different evidence-based interventions and policies based on the age of the target group, the level of risk, and the environment in which the campaign will be implemented.

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<sup>62</sup> Article 18, UN Convention on the Rights of the Child.

<sup>63</sup> For a more detailed set of AI recommendations, see "Human rights and drug policy: a paradigm shift: note prepared for the Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly", 20 September 2019, AI Index Number: POL 30/1130/2019 at <https://www.amnesty.org/en/documents/POL30/1130/2019/en/>

- Carry out awareness campaigns that can help children prevent or delay their first use of drugs for non-medical purposes and, for all people who use drugs, to avert the development of a dependence and reduce drug-related harms. Prevention interventions should include public educational programmes and information campaigns that incorporate harm reduction information and are based on scientific evidence that accurately describe the effects of drugs, including the risks both to people who use drugs and to others, without stigma.
- Develop targeted prevention campaigns specifically tailored for children and adolescents both in educational settings and in environments outside of school such as street and party scenes, aimed at empowering them to make informed decisions about their own conduct and provide them with information about where to find help if they require it.

### **Harm reduction, treatment and rehabilitation**

- Increase access to health and social services to reduce the risks and harms associated with the use of drugs, including prevention, information, harm reduction, voluntary treatment and rehabilitation services where medically indicated and on a non-discriminatory basis, including in prisons and other situations where people are deprived of their liberty.
- Ensure that harm reduction, treatment and rehabilitation services are available, acceptable and easily accessible to everyone on a non-discriminatory basis, and of good quality. This means paying particular attention to the needs of the most marginalised and to the specific needs of women, children and adolescents.
- Guarantee that drug treatment and rehabilitation programmes for people who use drugs are evidence-based, voluntary and safeguarded by informed consent. Such programmes must provide measures to protect the rights of any person who – temporarily or permanently – is unable to provide consent in order to assist them to do so and to respect their wishes.
- Prioritise healthcare and social support in community settings for the treatment and rehabilitation of drug dependence, rather than in institutions.
- Adopt and implement laws and policies to guarantee the effective regulation and supervision of treatment and rehabilitation services operated by private providers to ensure they do not undermine or threaten the right to health and to prevent other human rights abuses.

### **Stigma and discrimination**

- Address the root causes and socio-economic factors that may increase the risks of using drugs or that lead people to engage in the drug trade, including ill-health, denial of education, unemployment, lack of housing, poverty and discrimination.
- Put in place a wide set of gender-sensitive and holistic socio-economic protection measures to ensure that drug control laws and policies contribute to overcoming structural sources of vulnerability, stigma and discrimination that affect people who use drugs or who engage in the drug trade, especially women and those belonging to marginalised and disadvantaged communities.
- Develop and implement campaigns, in consultation with people who use drugs including those with drug dependence, to counter current stereotypes and to raise awareness throughout society of the rights of people who use drugs.

### **Decriminalisation**

- Decriminalise the use, possession and cultivation of all drugs for personal use.
- Decriminalisation policies must be accompanied by an expansion of health and other social services to address the risks related to drug use.
- If considering implementing threshold quantities to determine what is considered as 'possession for personal use', intended to distinguish personal possession from other offences such as trafficking, make sure that these are only used to set minimum quantities

below which a person cannot be prosecuted. If a person is found with a quantity that exceeds the threshold, it should not be assumed that a person can be charged with an offence for distribution or trafficking unless the intent to sell or distribute is proven. Thresholds should be meaningful enough to ensure that these are not so low that people continue to be prosecuted merely for their use of drugs, and be based on the realities and meaningful participation of people who use drugs.

- Ensure a process to review convictions and sentences for offences related to the use, possession and cultivation of drugs for personal use and, where appropriate, quash, commute or reduce existing convictions and/or sentences.
- Implement alternatives to the criminalisation of other minor, non-violent drug-related offences that do not cause harm to others. When determining whether to make or maintain a specific drug-related conduct as a criminal offence, ensure that the crime is clearly defined in law, that the proscribed conduct is aimed at addressing a specific problem directly associated with the possible harmful use of a particular drug, and that the conduct puts others at risk of sufficiently serious harm.

### **Policing**

- Reframe policing and other law enforcement policies to promote public health and human rights, including by building a constructive engagement and partnership between law enforcement officials and health providers around health and other human rights issues
- Such policies should include approaches to law enforcement that support the effective operation of harm reduction services (such as needle and syringe programmes or drug checking services), equipping police agencies for the provision and distribution of naloxone, and other harm reduction measures.
- Train law enforcement agencies in harm reduction and to desist from practices that undermine people's right to health.

### **Women and girls**

- Identify and address the structural factors that contribute to disproportionate impacts of drug laws and policies on women and girls, including stereotyping, gender bias and other discriminatory practices in the judicial and other systems.
- Pay specific attention to the stereotyped and gender-biased views about drugs that disproportionately affect women and girls, and promote gender-sensitive policies that respond to the differentiated needs, risks and harms of women and girls, transgender people and non-binary individuals (people who identify neither as men nor women).
- Provide harm reduction, treatment and rehabilitation services in suitable environments for women and girls who use drugs, including by providing integrated sexual and reproductive healthcare, information and services, and childcare facilities. These should be respondent to other gender-specific needs.

### **Children and young people**

- Guarantee the adequate availability and accessibility of prevention, harm reduction and treatment services specifically tailored to the needs of children and adolescents, including youth-led interventions and peer-to-peer strategies. Drug-related programmes for children and adolescents should be objective and evidence-based, taking into consideration the types of drugs they use and socio-economic factors that drive their use.
- Provide children and adolescents with drug-related information in an accessible manner, including on minimising drug-related risks and harms and where to find help if they require it.
- Eliminate any age barriers and parental consent requirements that limit access to HIV testing, harm reduction services and drug dependence treatment and care.
- Ensure that treatment and rehabilitation of children for a drug dependence is voluntary and safeguarded by informed consent. Decisions for children to undergo treatment or

rehabilitation for drug dependence should always ensure the meaningful participation of the child and their right to give or withhold consent in line with their evolving capacities.

- Provide appropriate assistance to parents who use drugs or have a dependence on drugs in carrying out their childcare responsibilities, when needed; and guarantee a safe environment including through, as appropriate, adequate housing, education and healthcare. Make sure that the use of drugs is never the sole justification for the separation of a child from parental care, for preventing reunification or for removing custody, and ensure that the best interests of the child is a primary consideration in every decision regarding their care. In such considerations, authorities must ensure that the use of drugs or dependence on drugs is not equated with neglect or abuse.

**ENDS//**

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