HARM REDUCTION INTERNATIONAL · Canadian HIV/AIDS Legal Network / Réseau juridique canadien VIH/sida · ehra eurasian harm reduction association · idpc International Drug Policy Consortium · INPUD International Network of People who Use Drugs · LBHM Lembaga Bantuan Hukum Masyarakat · Release Drugs, the Law & Human Rights · RIGHTS REPORTER FOUNDATION

Letter to the Special Rapporteur on the right to the highest attainable standard of physical and mental health on protecting and promoting the health of people who use drugs during the COVID-19 emergency

Harm Reduction International, the Canadian HIV/AIDS Legal Network, the Eurasian Harm Reduction Association (EHRA), the International Drug Policy Consortium (IDPC), the International Network of People who use Drugs (INPUD), LBH Masyarakat, Release, and Rights Reporter Foundation welcome the joint statement by the Special Rapporteur and other Special Procedures on the adoption of emergency measures to respond to the COVID-19 pandemic, urging states to "remain steadfast in maintaining a human rights-based approach to regulating this pandemic."

The COVID-19 emergency poses unprecedented challenges, creating new vulnerabilities and exacerbating existing ones. While exceptional measures are required to confront the emergency, they may be in tension with state obligations regarding the right to health, and other rights. Any such measure must be strictly necessary and proportionate, and safeguard the rights of those most at risk.

In this context, people who use drugs have unique needs and face unique risks due to criminalisation, stigma, underlying health issues, social marginalisation and higher economic and social vulnerabilities, including a lack of access to adequate housing and healthcare. If left unaddressed, this will cause irreparable harm. Evidence suggests that vulnerable groups should be prioritised by the emergency response in order to mitigate the spread of the pandemic.

We respectfully suggest that the Special Rapporteur provide guidance to states on how to promote and protect the right to health of people who use drugs in responding to the COVID-19 pandemic, by highlighting key concerns in a statement. We highlighted several of these below.

1. The Right to Health and Harm Reduction Services

Harm reduction services – including Opioid Agonist Therapy (OAT), Needle and Syringe Programmes (NSPs), the distribution of naloxone (an opioid antagonist medicine that can reverse the effects of an overdose), and safe consumption services (also referred to as overdose prevention sites) – have been recognised as essential components of the right to health. In an emergency context it is imperative these services be acknowledged as essential at the domestic level and remain available, accessible, acceptable, and of adequate quality without discrimination, while also protecting the health and safety of service providers.

Harm reduction service providers should be recognised as essential workers. They should be enabled to provide harm reduction services, and clients allowed to access such services without discrimination and fear of harassment. Exceptional measures should be encouraged to ensure service providers operate in a safe environment and that harm reduction services reach people where they are in a context of heightened isolation (for example, by allowing extended prescriptions or home-delivery). The distribution of sterile needles and syringes and commodities should be supported via peer-to-peer (secondary) distribution, and via home delivery to prevent further strain on national health systems.

It is recommended that states:

- Formally recognise people who use drugs as a vulnerable or high-risk populations in the context of COVID-19; accordingly, people who use drugs should be included among the groups receiving priority access to affordable COVID-19 tests;
- Ensure that harm reduction services remain available, accessible, acceptable and at the required level of quality and coverage, and that harm reduction services can be adapted to respond to the needs of people who use drugs in a context of emergency and isolation; this includes ensuring that adequate personal protective equipment is available for clients, including disposable face-masks, gloves, hand sanitizer and tissues;
- Recognise harm reduction service providers as essential workers and support harm reduction service providers to keep their frontline staff and outreach workers safe. This includes ensuring that adequate personal protective equipment is available for staff and peer workers;
- Ensure that homeless people who use drugs have access to night shelters, with safety regulations to prevent infections;
- Ensure clients can access harm reduction services without fear of repercussions, including by adopting dedicated guidelines for law enforcement against targeting of people who use drugs and harm reduction service providers.

2. The Right to Health and Internationally Controlled Medicines for Drug Dependence

The availability and accessibility of essential controlled medicines - including methadone and buprenorphine – must be safeguarded. States should adopt the necessary measures to ensure that the international supply chains of these substances are not disrupted, and ensure the maintenance of sufficient buffer stocks, while protecting the health and safety of workers.

It is recommended that states:

- Utilise simplified control procedures for the export, transportation, storage and provision of medicines containing controlled substances, in order to ensure people can maintain consistent access to these medicines and avoid symptoms of withdrawal;
- Allow people who use drugs to access extended prescriptions of Opioid Agonist Therapy (OAT), and allow OAT take-home services where not in place;
- Provide for induction to OAT via videoconference/e-health consultation;
- Consider adopting measures to replace licit and illicit products with prescribed or regulated substances, in order to reduce the risk of withdrawal, exposure to COVID-19, and exposure to toxic drug supply.

3. The Right to Health and Access to Medicines

The right to health, and the right to life, require that people have access to essential, life-saving medicines. People who use drugs are vulnerable to HIV, tuberculosis (TB) and hepatitis as well as overdose. Ongoing access to medicines - including anti-retroviral treatment for people living with HIV/AIDS, anti-TB drugs including second-line treatment, directly acting antiviral drugs for hepatitis, and naloxone for people who use opioids - is essential in maintaining the health of vulnerable populations. In times where access to health and harm reduction services may be disrupted, the ability to stock-up on these medicines is essential.

It is recommended that states: adopt measures to allow people who use drugs, harm reduction service providers, and other health services to stock-up on medicines for HIV, TB, hepatitis and overdose reversal.

4. Women who Use Drugs and the Right to Health

Around a third of all people who use drugs are estimated to be women. Women who use drugs are consistently reported to be at higher risk of HIV and hepatitis C infection than men who use drugs, while having less access to harm reduction services. Women who use drugs need ongoing access to non-judgemental sexual and reproductive health services. The intersecting stigma attached to gender and to drug use means that women who use drugs endure heightened discrimination.

The International Guidelines on Human Rights and Drug Policy clarify that states should "ensure the availability of and non-discriminatory access to good-quality gender-sensitive prevention, treatment, harm reduction, and other health care services for women who use drugs, including opioid substitution treatment for pregnant women, tailored to meet women's specific needs."

Available research also indicates that intimate partner violence is more commonly experienced by women who inject drugs than women in the broader population. This phenomenon is likely to be exacerbated in a context of heightened isolation and stress. It is thus essential that support services for victims of domestic violence are kept operational during the emergency, able to respond to the needs of women who use drugs, and equipped to remain effective in these circumstances. At the moment, little gender-disaggregated data is available on the impacts of COVID-19.

It is recommended that states:

- Integrate gender-specific considerations in the development of health and other measures adopted to confront the epidemic. This will also require the collection of gender-disaggregated data on the impacts of COVID-19;
- Ensure services for victims of domestic violence, as well as those providing sexual and reproductive health services, remain available, accessible, and equipped to respond to the needs of women who use drugs.

5. The Progressive Realisation of the Right to Health and Budgetary Implications

In a time of emergency, exceptional budgetary measures may be adopted. States should be reminded that retrogressive measures impacting the right to health are presumptively prohibited (with very limited and circumscribed exceptions). Funding of harm reduction and other essential services should be safeguarded, and additional funding may have to be made available to support exceptional measures for the provision of these services.

It is recommended that: In reviewing the allocation of resources in the context of the emergency, states should ensure that harm reduction services remain adequately funded, and allocate dedicated resources to allow harm reduction services to adapt to the emergency and guarantee the health and safety of service providers and clients.

6. The Right to Health in Prisons and Other Detention Settings

Prisons are high-risk environments for the spread of infectious diseases. In many instances, prisons and other places of detention are marked by overcrowding, poor sanitation conditions, and inadequate access to adequate nutrition, shelter from the elements, and healthcare. All of these contribute to the

heightened risk of transmission of a virus such as COVID-19. People who use drugs have unique health needs and risks, but because of criminalisation a disproportionate number of people who use drugs are imprisoned around the world. As a consequence, in many cases they are denied or prevented from accessing essential services. We welcome the initiatives undertaken by some states to reduce overcrowding in prisons and other detention settings by promoting early release and reducing the intake of prisoners with the goal of protecting the health of prisoners and staff. All states should be urged to consider the early release of vulnerable prisoners while adequately planning to care for the health of those released. Preparedness and response plans to COVID-19 adopted by prisons and other detention facilities should include targeted measures to safeguard the health of people who use drugs.

It is recommended that states:

- Adopt exceptional and immediate measures to release prisoners whose health is at more acute risk (such as the elderly, pregnant women, and those with pre-existing medical conditions including HIV, hepatitis C and tuberculosis), prisoners with dependents, those charged for minor and non-violent offences, and those detained because they cannot afford bail. Effective measures should be put in place, and adequately funded, to ensure that those released have access to adequate housing and healthcare in the community;
- For prisoners benefitting from early release who were prescribed OAT in prison, ensure continuity of care;
- Order the review of the legality, necessity, and reasonableness of pre-trial detention in the context of the emergency;
- Ensure that preparedness and response plans adopted by prisons and other detention facilities feature dedicated measures to safeguard the health of people who use drugs in detention.

7. The Right to Health in Drug Detention and Rehabilitation Centres

Thousands of people around the world are held in public and private drug detention and rehabilitation centres, often on a compulsory basis. As highlighted in the 2012 Joint UN Statement on compulsory drug detention and rehabilitation, these centres "raise human rights issues and threaten the health of detainees, including through increased vulnerability to HIV and tuberculosis (TB) infection." Many of these centres are overcrowded and operate without the presence of health professionals. They are also settings posing heightened risk for the transmission of COVID-19.

In line with the International Guidelines on Human Rights and Drug Policy, where compulsory drug treatment centres operate, states "should take immediate measures to close such centres, release people detained in such centres, and replace such facilities with voluntary, evidence-based care and support in the community."

It is recommended that states:

- Review the necessity and reasonableness of drug detention in the context of the COVID-19 emergency with release as a preferred measure, while ensuring continuity of care and planning for the protection of those released;
- Monitor closely facilities where people have opted for residential care, and mandate that clients be released where the health and safety of clients and staff cannot be guaranteed. Effective measures should be put in place, and adequately funded, to ensure that those released have access to adequate housing and healthcare in the community.

8. Emergency Security Powers and the Right to Health

Additional law enforcement powers may be put in place as part of the emergency response. They should be carefully balanced against the right to health (as well as the right to privacy) and should not be an obstacle to the promotion and protection of individual and public health. At the same time increased surveillance may further expose people who use drugs and other criminalised populations to law enforcement, and therefore imprisonment, immediately or in the future.

It is recommended that states:

- adopt moratoria on the enforcement of laws criminalising drug use and possession, as well as laws used to criminalise homelessness, with a view to ceasing unnecessary detention of individuals and creating an enabling environment for public health;
- meaningfully involve communities in the development and review of emergency measures to ensure that these are fair, effective, and balanced; including by being engaged in COVID-19 task teams at the local and national level.

9. The Right to Health and Information

The availability, accessibility, acceptability and quality of evidence-based information on the pandemic, emergency measures, and their health impacts is crucial to protect health, as well as to enable participation. Information should include details on how the emergency impacts specific populations and on the risks faced by people who use drugs, and promote safe drug use practices. Harm reduction information must (continue to) be available and accessible in multiple languages in a context of increased isolation. Against this backdrop, the internet plays a fundamental role; online censorship of evidence-based harm reduction information should be avoided. At the same time, it is imperative that governments act swiftly against the dissemination of misleading or false information.

It is recommended that states:

- Ensure that transparent and accurate information on the emergency, the exceptional measures put in place, and their potential impacts is available, regularly updated, and accessible; specific information on the unique impacts on people who use drugs and harm reduction services should be included;
- Refrain from restricting freedom of speech and the free flow of information.

Thanking the Rapporteur for his important work, we remain available to provide further information as needed.