



**Submission to the International Independent Expert
Mechanism to Advance Racial Justice and Equality in Law
Enforcement Pursuant to paragraph 15 of the Human Rights
Council [resolution 47/21](#) and paragraph 4 of Human Rights
Council [resolution 56/13](#)**

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I. Introduction

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, advocacy, public education and community mobilization. We are grateful to the Expert Mechanism for the opportunity to make this submission on human rights violations against people in Canada of African descent, in the context of Canada's drug laws.

I. Design and enforcement of drug laws

In Canada, "controlled substances" are governed by the federal [Controlled Drugs and Substances Act \(CDSA\)](#). Under section 4(1) of the CDSA, unauthorized possession of a substance for personal use (or "simple drug possession") is a criminal offence, with penalties ranging from fines to a maximum 7-year prison sentence, dependent on the substance. Activities such as sharing, selling, splitting or otherwise distributing, producing, importing, and exporting illicit drugs is also prohibited, with maximum penalties upon conviction of life in prison.

[After 12 consecutive years of decline, the rate of police-reported drug offences increased 13% from 2023 to 2024.](#)¹ Research demonstrates that drug prohibition fuels stigma and epidemics of preventable illness and death by impeding access to vital harm reduction and other health services. A recent study indicates that compared with white people, Black people less frequently accessed healthcare in the immediate period prior to toxic drug death, underscoring disparities in access to substance use care.² This is especially concerning in the context of an ongoing toxic drug crisis, which has [killed 53,308 people in Canada since 2016](#).³

II. Disproportionate and discriminatory impacts of drug laws on people of African descent

Canada's drug control framework is rooted in, and reinforces, racism and colonialism. **In Canada, Black and other racialized communities are disproportionately charged, prosecuted, and incarcerated for drug offences.**⁴ **As a result, they are deprived of their rights to equality and non-discrimination, as well as their rights to freedom from arbitrary arrest and detention, security of the person, and to the highest attainable standard of health.**

¹ Government of Canada, *Trends in police-reported drug crime in Canada*, 2025.

² T. Campbell et al., "Varying circumstances surrounding opioid toxicity deaths across ethno-racial groups in Ontario, Canada: a population-based descriptive cross-sectional study," *BMJ Public Health* 2024; 2:e000480. doi:10.1136/bmjph-2023-000480.

³ Government of Canada, *Opioid- and Stimulant-related Harms in Canada*, 2025.

⁴ See, for example, Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995.

Black people bear a disproportionate burden of law enforcement in Canada, with racial profiling continuing to pervade Canadian policing.⁵ Police stop Black people without reasonable cause under the guise of enforcing laws, like traffic violations, while actually in search of illegal drugs.⁶ While Black people are not more likely to commit drug offences, they are more likely to be surveilled, arrested, and incarcerated for drug offences:

- According to a [2018 report](#)⁷ and a [2020 study](#),⁸ Black (and Indigenous) people were overrepresented in cannabis possession arrests across Canada. In Halifax, Nova Scotia, Black people were more than 5 times more likely to be arrested for cannabis possession than white people.
- A [2019 study](#) of cases between 2007–2013 found that Black youth accused of cannabis possession in Ontario were more likely to be charged and less likely to be cautioned than white youth and youth from other racial backgrounds.⁹
- A [2020 report](#) found that Black (and Indigenous) people are dramatically overrepresented in drug charges recommended by Vancouver's Police Department. Since 2014, Black people have accounted for 6.4% of drug trafficking and possession charges despite constituting only 1% of the city's population.¹⁰
- [2015-2020 data](#) from Toronto police shows that while Black people make up less than 10% of the city's population, they account for 35% of those arrested for personal drug possession.¹¹
- A [2022 report](#) analyzing non-cannabis simple drug possession arrests from police services in Canada indicated that Black people were three times more likely in Ottawa, four times more likely in Toronto, and 6.6 times more likely in Vancouver

⁵ Ontario Human Rights Commission, *From Impact to Action: Final report into anti-Black racism by the Toronto Police Service*, March 2024.

⁶ Ibid and A. Khenti, "The Canadian war on drugs: Structural violence and unequal treatment of Black Canadians," *International Journal of Drug Policy* 25 (2014) 190–195; Ontario Human Rights Commission, *From Impact to Action*, supra and Ontario Human Rights Commission, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, August 10, 2020.

⁷ R. Browne, "Black and Indigenous people are overrepresented in Canada's weed arrests," *Vice News*, April 18, 2018.

⁸ A. Owusu-Bempah and A. Luscombe, "Race, cannabis and the Canadian war on drugs: An examination of cannabis arrest data by race in five cities," *International Journal of Drug Policy* (2020), 102937.

⁹ K. Samuels-Wortley, "Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada," *Race and Justice* 1-24 (2019).

¹⁰ D. Fumano, "New figures reveal the racial disparity in Vancouver drug charges," *Vancouver Sun*, August 7, 2020.

¹¹ S. Chu and G. Kolla, "Op-Ed: Take Toronto police out of the drug decriminalization equation," *NOW Toronto*, October 3, 2021.

to be arrested for drug possession than their representation in the population would predict.¹²

The gross overrepresentation of Black people in drug charges “raise concerns of systemic racism and anti-Black racial bias.”¹³ Further, the impacts of discriminatory surveillance, arrest, prosecution and incarceration has “damaged individual and family lives and devastated Black communities forced to cope with increasing violence over generations of incarceration” as well as “intensified levels of stigma,”¹⁴ feelings of helplessness, hopelessness and fear, and a broader sense of alienation and mistrust of institutions.¹⁵

III. Factors that exacerbate risk

The legacy of racist law enforcement and criminal law practices has resulted in the staggering overrepresentation of Black people in Canadian prisons.¹⁶ In 2021, despite only representing 4% of adults in Canada, 9% of the federally incarcerated population was Black,¹⁷ while [1 in 14 Black men aged 18-34 experienced incarceration in provincial prisons compared to 1 in 70 white men](#).¹⁸

Moreover, almost [20% of Black federal prisoners are incarcerated for a drug-related offence](#),¹⁹ with [more than half of Black women in federal prisons](#) serving sentences for drug-related offences.²⁰ Many women convicted of such offences were carrying drugs across borders as a way to alleviate their situations of poverty, or under threat of violence.²¹ Significant numbers of prisoners also use drugs and the reuse of drug injection equipment is prevalent due to the lack of sterile injection equipment behind bars.²²

¹² R. Browne, *Exclusive Data Shows Canadian Cops Target More Black and Indigenous Folks for Drug Arrests*, 2022.

¹³ *A Disparate Impact*, supra.

¹⁴ A. Khenti, supra.

¹⁵ A. Cotter, *Perceptions of and experiences with police and the justice system among the Black and Indigenous populations in Canada*, Statistics Canada, 2022 and Ontario Human Rights Commission, *Paying the price: The human cost of racial profiling: Inquiry report*, 2003.

¹⁶ Government of Canada, *Canadian Black justice system report*, 2025.

¹⁷ Government of Canada, *Overrepresentation of Black People in the Canadian Criminal Justice System*, December 2022.

¹⁸ A. Owusu-Bempah, et al., “Race and Incarceration: The Representation and Characteristics of Black People in Provincial Correctional Facilities in Ontario, Canada,” *Race and Justice* 13(4), 2023, 530-542 and V. Shi, “Professor Akwasi Owusu-Bempah was recently featured in an article about Black overrepresentation in Ontario’s jails,” *University of Toronto*, 2021.

¹⁹ Office of the Correctional Investigator, *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries Final Report*, 2013.

²⁰ Ibid and Canadian Centre for Policy Alternatives, *Decriminalizing Race: The case for investing in community and social support for imprisoned racialized women in Canada*, September 2020, p. 13.

²¹ Office of the Correctional Investigator of Canada, *Annual report of the Office of the Correctional Investigator, 2012-2013*, 2013.

²² E. van der Meulen, “‘It Goes on Everywhere’: Injection Drug Use in Canadian Federal Prisons,” *Substance Use & Misuse* 52, 7 (2017): pp. 884–891; C. Hankins, “Confronting HIV infection in

Research demonstrates that incarceration is a driving factor behind Canada's HIV and HCV epidemics.²³

IV. Factors that mitigate risk

Decriminalization

In 2017, the [Committee on the Elimination of Racial Discrimination \(CERD\) urged Canada](#) to “address the root causes of overrepresentation of African-Canadians and Indigenous peoples at all levels of the justice system.”²⁴ Among the Committee's recommendations was that **Canada re-examine existing drug policies** in order to prevent racially biased sentencing as well as provide evidence-based alternatives to incarceration for non-violent people who use drug.²⁵ Similarly, in 2021 the [UN High Commissioner for Human Rights](#) called on States to remove or reform “laws and practices that act as incentives to perpetuate racial discrimination in law enforcement and the criminal justice system,” including “drug-related policies, laws and practices with discriminatory outcomes.”²⁶

One key response to mitigate the anti-Black racism and harms of drug prohibition is the decriminalization of simple drug possession, which has been recommended by numerous health and human rights bodies, including [all agencies of the UN system](#)²⁷ and the [International Guidelines on Human Rights and Drug Policy](#)²⁸ as a measure that both protects health and upholds human rights.²⁹ Despite some positive legal and policy developments, including the passage of a law in 2022 by Canada to fulfill its “commitment

prisons,” *Canadian Medical Association Journal* 151,6 (1994): pp. 743–745; C.A. Hankins et al., “HIV infection among women in prison: an assessment of risk factors using a non-nominal methodology,” *American Journal of Public Health* 84,10 (1994): pp. 1637–1640.

²³ M.W. Tyndall et al., “Intensive injection cocaine use as the primary risk factor in the Vancouver HIV–1 epidemic,” *AIDS* 17,6 (2003): pp. 887–893; H. Hagan, “The relevance of attributable risk measures to HIV prevention planning,” *AIDS* 17,6 (2003): pp. 911–913.

²⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada*, UN Doc. CERD/C/CAN/CO/21-23, 13 September 2017.

²⁵ *Ibid.*

²⁶ Annual report of the United Nations High Commissioner for Human Rights, *Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*, UN Doc A/HRC/47/53, 1 June 2021.

²⁷ UN Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc. CEB/2018/2, January 18, 2019.

²⁸ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP and WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019.

²⁹ Other UN bodies that have recommended decriminalizing simple drug possession include the World Health Organization, the Joint United Nations Programme on HIV/AIDS, the UN Development Program, the [UN Special Rapporteur on the right to health](#), and the [UN Special Rapporteur on torture](#) and other cruel, inhuman and degrading treatment or punishment.

to address systemic inequities, including the overrepresentation of Indigenous Peoples, Black, and marginalized Canadians, in the criminal justice system”³⁰ that repealed all mandatory minimum penalties of imprisonment for drug offences and promoted the use of diversion for personal drug possession,³¹ yearly decreases in police-reported drug offences reversed in 2024 — fueled by prominent voices, including law enforcement, calling for more punitive approaches to drug offences.

Harm reduction measures

Against the backdrop of an unprecedented toxic drug crisis, Canada has adopted some measures, including [supervised consumption services](#) (SCS) and drug checking services. SCS are hubs of community care and support that reduce the risk of overdose and HIV and HCV infection, backed by decades of empirical evidence proving their effectiveness.³² Drug checking services allow people to verify the chemical composition of their drug samples.³³ Despite overwhelming evidence of their positive health benefits, these measures have increasingly been met with opposition.

With respect to SCS, the provinces of Alberta, Ontario, and Quebec have imposed strict regulations, distancing requirements, and/or defunded sites³⁴ — leading to the closure of most SCS in Alberta and Ontario. Encouragingly, strategic litigation has been launched in each province challenging these policy decisions.³⁵ In the case of Ontario, the Black Legal Action Centre, an intervener in the case, highlighted how the affected sites are in predominantly Black neighbourhoods in Toronto and how the access of Black people who use drugs to SCS “is crucial to reduce their likelihood of being charged, penalized, incarcerated, and of overdosing in carceral facilities, resulting from the over-policing of Black people.”³⁶ This is especially concerning in a context where toxic drug deaths among Black people in Toronto have increased in recent years.³⁷

³⁰ Department of Justice Canada, *Bill C-5: An Act to amend the Criminal Code and the Controlled Drug and Substances Act*, November 27, 2023.

³¹ *An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*, S.C. 2022, c. 15, 2022.

³² G. Kolla and T. Gomes, “[What the evidence says about defunding Ontario's remaining supervised consumption sites](#),” March 2026.

³³ N. Maghsoudi, J. Tanguay, K. Scarfone, I. Rammohan, C. Ziegler, D. Werb et al. Drug checking services for people who use drugs: a systematic review. *Addiction*. 2022; 117: 532-544. <https://doi.org/10.1111/add.15734>

³⁴ See Ontario’s *Community Care and Recovery Act, 2024*, S.O. 2024, c. 27; Alberta’s *Mental Health Services Protection Act*, SA 2018, c M-13.2, *Mental Health Services Protection Regulation*, Alta Reg 114/2021, and the *Recovery-oriented Supervised Consumption Services Standards*; and Quebec’s *An Act to regulate supervised consumption sites in order to promote their harmonious cohabitation with the community*, Ch. 34, 2025.

³⁵ *The Neighbourhood Group et al v HMKRO*, 2025 ONSC 1934 and *Brown v Alberta*, 2025 ABKB 495.

³⁶ Factum of the Intervener Black Legal Action Centre, *TNG et al HMKRO*, Court File No. CV-24-00732861-0000.

³⁷ Toronto Public Health, *Annual summary of opioid toxicity deaths in Toronto*, October 2025.

Moreover, in spite of significant evidence of the health benefits of opioid agonist therapy (OAT), including in prison,³⁸ and [UNODC, UNAIDS, and WHO](#) recommendations to implement sterile needle and syringe programs in prison,³⁹ prisoners in Canada continue to experience barriers to OAT, including no or severe restrictions on access⁴⁰ resulting in destabilization, acute withdrawal, and an increased risk of toxic drug injury or death,⁴¹ while access to sterile drug equipment in prison is extraordinarily limited.⁴² Where prison-based needle and syringe programs exist, multiple breaches of confidentiality and restricted access has resulted in [limited program uptake](#).⁴³

These restrictions contravene the [UN Standard Minimum Rules for the Treatment of Prisoners](#) which recommend that incarcerated people must, at a minimum, enjoy the same standards of healthcare that are available in the community.⁴⁴ Lack of access to equivalent health care and harm reduction measures in prison has disproportionate impacts on Black people, as Black people in prison and post-release face an inequitably high risk of opioid toxicity death. In the province of Ontario, researchers found that an alarmingly high number of Black, mostly young, persons dying from opioid toxicity during and following incarceration (i.e. a staggering 0.9% of Black persons who experienced provincial incarceration between 2015 and 2020).⁴⁵

³⁸ WHO, *Guidelines for the Psychosocially Assisted Pharmacological Treatment of Opioid Dependence*, 2009.

³⁹ UNODC, ILO, UNDP, WHO and UNAIDS, *Policy brief: HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions*, 2013; OHCHR and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, Consolidated Version, UN Doc HR/PUB/06/9, 2006, Guideline 4, para. 21(e).

⁴⁰ See, for example, HIV Legal Network, *Urgent Concerns Regarding CSC's Recent Opioid Agonist Treatment Policy Changes – Open Letter*, December 2025; F. Kouyoumdjian et al., “Physician prescribing of opioid agonist treatments in provincial correctional facilities in Ontario, Canada: A survey,” *PLoS One* 2018; 13(2); and West Coast Prison Justice Society, “Representative human rights complaint against Correctional Service Canada (CSC) on behalf of federal prisoners with opioid use disorder,” June 4, 2018.

⁴¹ C. Bodkin, M. Bonn and S. Wildman, “Fuelling a crisis: Lack of treatment for opioid use in Canada’s prisons and jails,” *The Conversation*, March 4, 2020.

⁴² Government of Canada, *The Prison Needle Exchange Program*, November 2024.

⁴³ See S. Chu et al., *Points of Perspective: Research report on the federal prison needle exchange program in Canada*, HIV Legal Network and Toronto Metropolitan University, November 2022, p. 5 and N. Kronfli, et al., *Using nominal group technique to identify perceived barriers and facilitators to improving uptake of the Prison Needle Exchange Program in Canadian federal prisons by correctional officers and healthcare workers*, *International Journal of Drug Policy*, 130 (2024) 104540.

⁴⁴ Rule 24 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, UN Doc. A/RES/70/175, December 17, 2015 and Rule 10 of *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, UN Doc. A/RES/65/229, March 16, 2011.

⁴⁵ A. Owusu-Bempah et al., “Opioid toxicity deaths in Black persons who experienced provincial incarceration in Ontario, Canada 2015–2020: A population-based study,” [Preventive Medicine](#) Vol. 177, December 2023, 107778.

Recommendations

To address the ongoing impacts of repressive drug laws and policies which disproportionately impact Black communities and fuel human rights violations of people who use drugs, the HIV Legal Network urges the Expert Mechanism to call on States to:

- Immediately prohibit all forms of racial profiling by law enforcement and ensure investigations and discipline for racial bias.
- Mandate the collection and timely publication of race- and gender-disaggregated information in all law enforcement encounters, in a manner that protects the identity of detained individuals and is open to public scrutiny.
- Decriminalize the possession of all drugs for personal use and activities related to safe drug supply and distribution, and remove all sanctions for such activities.
- Expand and fund harm reduction services such as supervised consumption and drug checking services, ensuring such programs are culturally appropriate (e.g. by ensuring access to safer inhalation) and gender responsive.
- Affirm the right of people who use drugs to bodily autonomy and informed consent to treatment and denounce coercive and involuntary detention and care, including pursuant to forced substance use treatment legislation.
- Expand evidence-based alternatives to incarceration for people who use drugs.
- Implement or remove barriers to key health and harm reduction measures in all prisons and other places of detention, including:
 - needle and syringe and other drug equipment distribution programs
 - opioid agonist therapy
 - condoms and other safer sex supplies
 - programs to address tattooing, piercing, and other forms of skin penetration
 - overdose prevention services
 - safer supply

and ensure such programs are culturally appropriate and gender specific.

- Update all federal, provincial, and territorial prison drug strategies to reject stigmatizing “zero tolerance” approaches to drug use in favour of rights-based, evidence-informed harm reduction principles and practices.
- Ensure and support the meaningful involvement of civil society organizations, including networks of people who use drugs and Black and other marginalized communities, in the elaboration, implementation and evaluation of drug policy and services.