January 2016

INPUD Submission to the Civil Society Task Force to UNGASS on Drugs

International Network *of* People *who* Use Drugs

The International Network of People who Use Drugs (INPUD) Submission to The Civil Society Task Force to UNGASS on Drugs 2016

Contents

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Guiding Principles

- People who use drugs must be respected as experts on their own lives and lived experiences.
- Participation of people who use drugs in debate and policy formation must be meaningful, not tokenistic.
- The wellbeing and health of people who use drugs and their communities must be considered first and foremost in the formation of laws and policies related to drug use.

Introduction: the Human Rights of People who Use Drugs

The submission of the International Network of People who Use Drugs (INPUD) to the Civil Society Task Force to UNGASS on Drugs 2016 is derived from INPUD's *Consensus Statement on Drug Use Under Prohibition: Human Rights, Health, and the Law*.[1] INPUD's *Consensus Statement* focusses on human rights, health, and the law in relation to people who use drugs. The document – and this submission – is informed by the perspective of those who are so catastrophically impacted by global prohibition and by the so-called 'war on drugs': people who use drugs themselves.

This submission stems from five consultations conducted by INPUD in 2015 with representatives of drug user organisations internationally. Each consultation was comprised of focus groups with participants. Consultations were undertaken in Dar es Salaam, Tanzania, in Bangkok, Thailand, in London, England, and in Tbilisi, Georgia. A virtual consultation was also conducted.

In total, representatives of 24 drug user organisations from 28 countries contributed to the consultations.

The assertions made in this submission are driven by the data, reports, and testimony gathered in these consultations; each assertion made in this document is backed up by first-hand testimony from one or several representatives of drug user organisations globally.[2]

INPUD's Consensus Statement, and this submission, collates a declaration of rights of people who use drugs, and these inform the principles upon which this submission is based, and the recommendations made; they build on established and recognised human rights, tailoring them to the specific needs of people who use drugs in emphasising the human rights that are most pertinent specifically to them. These rights are:

- The Right to Rights/RIGHT 1: People who use drugs are entitled to their human rights, which must be protected by the rule of law
- RIGHT 2: People who use drugs have the right to non-discrimination

[1] INPUD's *Consensus Statement* is available at http://www.inpud.net/en/news/inpud-consensus-statement-drug-use-under-prohibition-human-rights-health-and-law

[2] These reports and testimony are available in INPUD's *Consensus Statement*.

- RIGHT 3: People who use drugs have the right to life and security of person
- RIGHT 4: People who use drugs have the right not to be subjected to torture or to cruel, inhuman, or degrading treatment
- RIGHT 5: People who use drugs have the right to the highest attainable standard of health
- RIGHT 6: People who use drugs have the right to work, to free choice of employment, to just and favourable conditions of work, and to protection against unemployment
- RIGHT 7: People who use drugs have the right not to be subjected to arbitrary arrest or detention
- RIGHT 8: People who use drugs have the right to bodily integrity
- RIGHT 9: People who use drugs have the right to found a family entitled to protection by the law, entitled to privacy, and entitled to be free from arbitrary interference
- RIGHT 10: People who use drugs have the right to assemble, associate, and form organisations

Drugs and Health

For people who use drugs, the right to the highest attainable standard of health specifically includes harm reduction services, which are designed to reduce the avoidable and mitigatable harms and risks to health that can be associated with drug use, especially harms produced by prohibition, such as HIV and hepatitis C acquisition, and overdose. Harm reduction interventions notably include needle and syringe programmes, opiate substitution therapy (with methadone and buprenorphine recognised by the World Health Organization as being 'essential medicines'), drug consumption rooms, and peer-based naloxone distribution.

However, harm reduction services are severely lacking, and they are strongly opposed by many organisations and governments: only an estimated 10% of people worldwide who require harm reduction services have access to them.[3] As a result of this considerable lack of harm reduction services, combined with social exclusion and criminalisation, almost 18% of people who inject drugs are living with HIV, between 45.2% and 55.3% are estimated to be living with hepatitis C, and there are around 183,000 drug-related deaths every year,[4] primarily overdose-related deaths.

Comprehensive harm reduction services, incorporating all required services, are a rarity. Many of the harm reduction interventions and services that are available are run as 'pilot projects', or applied piecemeal. Harm reduction programmes and service providers can be high-threshold, open at inconvenient times, in areas that are inaccessible, can be prohibitively expensive, can involve long waiting lists, and can involve punishments. All of these factors present substantial obstacles in accessing what services are available.

Further to barriers in accessing service provision, people who currently use drugs can be denied treatments and healthcare on the basis of their drug use. This is of especial concern in terms of

[3] Mathers B. M. et al., 2010, HIV prevention, treatment, and care services for people who inject drugs: a systematic review of global, regional, and national coverage. *The Lancet*: DOI:10.1016/S0140-6736(10)60232-2
[4] UNODC, 2014, *World Drug Report* (Vienna: UNODC)

treatment for hepatitis C and antiretroviral therapy for HIV. Antiretroviral coverage for people who use drugs living with HIV is only about 4% globally; in some countries it is less than 1%.[5]

Services can fail to take people's variable and nuanced realities into account: people who use drugs can be seen through a filter of only their drug use, and their specific and individual requirements can be overlooked and sidelined. This results in their not being seen to require non-drug-specific services such as, for example, gender-specific services, condom provision, safer sex information and education, rape alarms, or referral.

Access to healthcare and harm reduction services in closed settings – including pre-trial detention and prisons – is, internationally, almost entirely lacking. Further to a lack of trained medical personnel, harm reduction interventions such as opiate substitution therapy and needle and syringe programmes are conspicuous by their absence. Due to a lack of availability of sterile injection paraphernalia, incarcerated people who inject drugs have to reuse and share injection paraphernalia. And because of a lack of opiate substitution in many closed settings, people who have opiate dependency and are detained are forced to experience drug withdrawals, and in some contexts are interrogated whilst withdrawing.

In addition, blood-borne infection and STI screening and counselling, as well as antiretroviral therapy and treatment for hepatitis C, are very rarely provided in closed settings.

Recommendations

- People who use drugs must have access to the highest attainable standard of service provision, particularly healthcare and harm reduction.
- Harm reduction services must be available accessibly, freely, and comprehensively, and must take into account people's nuanced and variable realities.
- Service and healthcare providers, as well as the police and staff in all closed settings, must be sensitised to the specific needs of people who use drugs.
- Comprehensive healthcare and harm reduction services must be available in *all* contexts, including closed settings such as prisons and pre-trial detention.
- People who use drugs must be involved in the conception, implementation, evaluation, and monitoring of service and healthcare provision. Where possible, service provision must be peer-led.

[5] Mathers, B. M., et al., 2010, HIV prevention, treatment, and care services for people who inject drugs: a systematic review of global, regional, and national coverage. *The Lancet* 375, 9719:1014-1028

Drugs and Crime

Criminalisation: Driving Harm

Since people who use drugs are frequently criminalised, drug-using paraphernalia, such as syringes and needles, can be used as evidence of drug use by the police, and paraphernalia can be confiscated and/or destroyed by police. This impedes safer, hygienic use of drugs and serves as a disincentive for people who use drugs to carry sterile injection paraphernalia. This increases the likelihood of rushed injecting and needle sharing, increasing the risk of overdose and impeding efforts to prevent transmission of blood-borne infections like HIV and hepatitis C. People who use drugs in public spaces fear state-sponsored harassment, violence, and arrest, and again this results in rushed drug use, and people using drugs in unhygienic and dangerous conditions.

Further to the criminalisation of people who use drugs acting as a significant barrier to health and wellbeing, the criminalisation of drugs themselves compounds harm. Since drugs are criminalised and controlled, they are produced in a black-market context, fuelling violence and organised crime.

Such illicit drug production and distribution results in people who use drugs being unable to know the composition and purity of the drugs that they buy or use, or whether the drugs that they use contain contaminants. This results in driving morbidity and mortality of people who use drugs, who can overdose on drugs of unknown strength, and can be poisoned by dangerous contaminants. Notable examples include the presence of anthrax in heroin, and contamination of ecstasy with PMA, a dangerous and toxic contaminant.

Detention and Arrest of People who Use Drugs

Drugs are controlled and people who use drugs are criminalised. This gives police legal sanction to harass and arbitrarily stop and search people on the suspicion that they use, sell, and/or carry drugs.

People who use drugs are frequently stopped and searched simply for 'appearing' as if they use drugs, or as if they have committed a drug-related offence. The police ascertaining whether someone may have committed a drug-related offence is hugely arbitrary; it is driven by bias, stigma, and discrimination. People can be singled out if they appear to be 'under the influence', or if they show signs of having used or injected drugs.

Those who are stopped and searched, as well as those who are charged and arrested, are notably determined by racism, xenophobia, and classism. The war on drugs is a lens through which the most marginalised in society are harassed and controlled by the police. Stopping and searching of people who use drugs is invasive, can involve violence including gendered and sexual violence, can involve compulsory urine and blood testing, and can result in outing people who use drugs to the wider community, leading to social exclusion and risk of violence.

The stopping and searching, arresting, and detention of people who use drugs are frequently used as tools with which to displace people who use drugs from public space, as a mode of enforcing social exclusion and segregation of people who use drugs from civil society.

Further to being arbitrarily stopped, searched, and arrested, in many countries people who use drugs are subject to arbitrary detention in compulsory 'treatment' centres. Such detention is justified by the 'addiction-as-disease' understanding of drug dependency: people who use drugs drugs are pathologised as sick and unable to exercise agency and self-determination. Since they are seen as unable to make objective and informed decisions, this is used to justify compulsory 'care', 'treatment', and 'rehabilitation', as well as compulsory testing for blood-borne viruses. Informed consent is seen as irrelevant for those who are infantilised as being unable to exercise consent. In addition to detaining people without any due legal process, compulsory 'treatment' centres for people who use drugs are often marked by violence, torture, unpaid and forced labour, and a lack of access to service and healthcare provision. Compulsory testing for blood-borne viruses, the possibility of medicalised incarceration, and breaches in medical confidentiality all act as barriers and disincentives to accessing healthcare and service provision.

Recommendations

- People who use drugs must not be subject to arbitrary detention or arrest, arbitrary stop and search, compulsory treatment, or forced labour.
- People who use drugs must not have their bodily integrity violated through drug testing, or through being pressured or coerced to terminate their pregnancy or to be sterilised (discussed further below).
- Barriers to health must be undermined and dismantled: people who use drugs must be decriminalised, and drugs must be produced in a legal and regulated context.

Human Rights, Women, Children, and Communities

Denial of Rights

Human rights are inalienable, and must be protected by the rule of law. However, because people who use drugs are criminalised, stigmatised, and socially excluded, they are treated like second-class citizens who are not entitled to legal protection of their inalienable human rights. People who use drugs, therefore, often do not have recourse to the same legal infrastructures as other citizens, notably laws protecting rights to be free from violence and discrimination, and the right to health.

In practice, therefore, the human rights of people who use drugs are frequently *not* protected by the rule of law. Though human rights are universal, people who use drugs are frequently seen and treated as less than human. They are not seen as being entitled to the same rights, and protection by the same laws, as everybody else.

Due to being criminalised and marginalised, and due to well-founded fear of experiencing problematic interactions with law enforcement and the police, people who use drugs can be reluctant and/or unable to access legal justice and/or to report difficulties such as abuse, violence, and discrimination that they may have experienced. People who use drugs frequently have to protect themselves and their loved ones, families, and community members, and cannot rely on the police or state to protect them.

Stigma and Discrimination

Everybody has the right to non-discrimination. But criminalisation of people who use drugs drives, and is driven by, stigmatisation and discrimination. Because drugs, and people who use them, are criminalised, people who use drugs are dehumanised, are judged to be criminals, and are understood as dangerous, deviant, and socially disruptive. It is these understandings that result in people who use drugs being endemically discriminated against, and it is these perceptions that inform systemic violence and human rights violations perpetrated against people who use drugs. Fear and hatred of people who use drugs – drug-userphobia – is rife, and is rarely challenged.

Further to being seen as dangerous and criminal, people who use drugs – particularly those with drug dependencies – are understood to be sick and pathological. This results from what may be referred to as the 'addiction-as-disease' model, which constructs people who have drug dependencies as having a 'disease', as being sick, dangerous, and unable to exercise agency and self-determination. This understanding is used to justify compulsory 'treatment' for people who use drugs. This stigmatising perception is also used to justify removal of children from parental custody: if people who use drugs are seen to be unable to make decisions about their *own* lives, their capacity to take care of *others* is undermined in turn.

People who use drugs can internalise stigma: they can come to believe the stereotypes and negative generalisations that are made about them. This correspondingly comes to negatively impact self-worth, mental health, and wellbeing. Such is the power of internalised stigma that people who use drugs can discriminate against one another; they can make efforts to distance themselves from what they perceive to be more problematic types or patterns of drug use, or from communities of people who use drugs who are also members of other marginalised communities. And such is the power of stigma, that people who use drugs experience discrimination and social exclusion in civil society, and perpetuated by their own communities and families. Discrimination informs frequently experienced violence, including physical, verbal, sexual, gendered, and structural/institutional violence. This is discussed further below.

People who use drugs are also frequently subject to drug-shaming and drug-userphobia in the media. People can be outed as using drugs by the media, with this leading to discrimination in broader society, and termination from employment. Unlike legislation which formally recognises hate speech along

the lines of race, ethnicity, nationality, disability, and sexuality, hate speech against people who use drugs is rarely, if ever, formally recognised in legislation. Drug-related hate speech, drug-userphobia, and drug-shaming rarely, if ever, go challenged or punished.

Resulting from endemic stigma and discrimination, people who use drugs are often at a considerable disadvantage in the job market, and frequently experience discrimination from their employers. Knowledge of their drug use can result in difficult and abusive encounters at work and hostile work environments. Knowledge of drug use can also result in job termination, and not being considered for job interviews. People who use drugs, therefore, often have to conceal their drug use from employers and colleagues, and may avoid seeking assistance or service provision for their drug use, for fear that being outed as a drug user will come to detrimentally impact workplace interactions and job security.

Violence

As a result of criminalisation, stigma, and the discrimination they drive, people who use drugs are subject to widespread violence. This violence is perpetrated by agents of the state – notably the police – and criminalisation endorses it. People who use drugs additionally experience violence within their own communities and families.

This violence comes in many forms. It ranges from physical and sexual violence, to structural violence and coercion from staff in institutional and closed settings, to emotional abuse and harassment, to murder, state-sponsored execution, and extra-judicial killings.

Since people who use drugs are criminalised and stigmatised, they cannot rely on being protected by the law, or by those who enforce it. Far from it: people who use drugs are subject to police-perpetrated abuse and violence, including sexual violence and torture. In some contexts, the police have been responsible for extra-judicial killings of people who use drugs and members of the communities in which they live, and numerous states retain the death penalty for drug offences, with people still executed for a wide range of drug-related offences.

The human rights violations, violence, harassment, and abuse perpetrated by the police and authorities against people who use drugs continue in detention and incarceration. People who use drugs are subject to abuse and violence, including sexual violence, and physical and mental torture in prisons and pre-trial detention. Forced 'treatment' and 'rehabilitation' centres are also marked by high levels of violence and abuse. People who use drugs can be forced to experience drug withdrawal in detention, and can be interrogated whilst withdrawing. This is recognised as a form of torture.[6]

[6] Méndez, J. E., 2013, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

Community, Children, Family

Intrusions into the families and homes of people who use drugs are frequent, and are undertaken by the police and by social services. Such intrusions are frequently motivated simply by knowledge (or supposition) of drug use, irrespective of whether drug use has impacted parenting or family life. And since people who use drugs are assumed, by default, to be unfit parents, they – especially women who use drugs – face issues with child custody.

Such problematic interactions and invasions of families and domestic environments, fed as they are by bias, stigma, and preconception, all serve to distance people who use drugs and their families and communities from healthcare provision, as well as from service and social service providers.

Women who Use Drugs

The criminalisation and stigmatisation of people who use drugs intersects with widespread discrimination and violence, including sexual and gendered violence against women. And the disproportional social exclusion and economic disenfranchisement of women compounds the problem. Women who use drugs therefore experience gendered violence, both in civil society and at the hands of the authorities and the police.

Women who use drugs regularly experience problematic and discriminatory interactions with service and healthcare providers, including social service involvement, domestic intrusions, breaches in confidentiality, and losing child custody, and often do not have access to services tailored to women's specific needs.

Women who use drugs are disproportionately impacted by criminalisation and policing, and the difficulties faced by women who use drugs are compounded in cases of pregnancy: pregnant women who use drugs are subject to gross invasions of their privacy and their bodily integrity. There are increasing occurrences of the welfare of foetuses being prioritised by social services, as well as by healthcare and service providers, over the wellbeing and rights of pregnant women who use drugs.

Pregnant women who use drugs face the possibility of compulsory drug 'treatment' and detention, and since women who use drugs are pathologised and demonised as being incapable of looking after themselves and their families, they can be forced, coerced, and incentivised to have their foetus terminated, and can be coerced and/or incentivised into being sterilised. Pregnant women who use drugs can additionally be prosecuted for ostensibly endangering their foetus through using drugs. Pregnant women who use drugs can be subject to breaches in medical confidentiality, can be denied access to antiretroviral therapies and harm reduction services, and can be denied access to opiate substitution despite it being safe and recommended by the World Health Organization for pregnant women who have opiate dependency. This all results in women who use drugs facing considerable and significant barriers to accessing service and healthcare provision.

Other Marginalised Communities

People who use drugs and who are members of other marginalised communities experience compounded stigmatisation, discrimination, and human rights violations. Women, people of colour, people living in poverty, LGBTQ people, sex workers, and people living with HIV and hepatitis C all experience stigmatisation, social exclusion, and discriminatory violence. Drug-userphobia intersects with other discriminatory generalisations: with whorephobia, misogyny, sexism, classism, and racisms, for example. People who use drugs who are also members of other marginalised and socially excluded communities experience compounded difficulties and barriers in accessing healthcare and service provision.

Recommendations

- People who use drugs, and drug use, must be decriminalised.
- Decriminalisation alone is not enough: people who use drugs must have access to legal justice and police protection.
- People who use drugs must not be assumed to be sick, deviant, or criminal.
- Drug-userphobia and drug-shaming must be legally recognised as discrimination and hate speech.
- Those who enforce the law, particularly the police and members of the criminal justice system, must be sensitised to the needs and rights of people who use drugs.
- Violence perpetrated against people who use drugs, both in civil society and at the hands of the authorities, the police, and healthcare providers, must be investigated and prosecuted.
- Executions and extrajudicial killings of people who use drugs, and for drug-related offences, must end.
- Drug use alone must never justify the invasion or disruption of privacy or of family and/or domestic life.
- People who use drugs must not be treated differently from their co-workers on the basis of their drug use. They have the same right to employment as all others.
- People who use drugs must be able to work without threat of arbitrary termination, discrimination, and harassment.