

**Joint submission to OHCHR's report on human rights challenges in addressing and countering all aspects of the world drug problem**

19 May 2023

**Submitting organisations:**

**Harm Reduction International (HRI)** is a leading non-governmental organisation. Harm Reduction International (HRI) envisions a world in which drug policies uphold dignity, health and rights. We use data and advocacy to promote harm reduction and drug policy reform. We show how rights-based, evidence-informed responses to drugs contribute to healthier, safer societies, and why investing in harm reduction makes sense.

HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

**Penal Reform International (PRI)** is a non-governmental organisation working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

PRI enjoys ECOSOC Special Consultative Status since 1993. Registered in The Netherlands (registration no 40025979), PRI operates globally with offices in multiple locations.

The **"Promo-LEX"** Association is a civil society organization with special consultative status with the UN (ECOSOC) based in Chisinau, whose purpose is to advance democracy in the Republic of Moldova through promoting and defending human rights and monitoring democratic processes. Promo-LEX was founded in 2002 and is based in Chisinau. Promo-LEX works through the Human Rights Program and the Monitoring Democratic Processes Program.

**European Prison Litigation Network (EPLN)** is an international NGO holding a participatory status with the Council of Europe, which focuses its activities on enhancement of the judicial protection of the fundamental rights of prisoners in the Member States of the Council of Europe. It currently brings together 25 national NGOs and bar associations from 18 Council of Europe Member States. 21 ter, rue Voltaire, 75011 Paris, [contact@prisonlitigation.org](mailto:contact@prisonlitigation.org)

**Health Without Barriers (HWB)** - the European Federation for Prison Health, brings together national-based independent scientific societies and associations of medical professionals, in order to promote health and human rights in European prisons, for the benefit of the entire population. HWB aims at improving prisoners' health and detention conditions, through the promotion of good health practices, ethical standards for the protection of human rights in prison, research, and interdisciplinary collaboration in the prison field.

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## I. Introduction

[Harm Reduction International](#) (HRI), [Prison Reform International](#) (PRI), [European Prison Litigation Network](#) (EPLN), [PromoLex](#) and Health Without Barriers, welcome the opportunity of providing information ahead of the OHCHR's report on "human rights challenges in addressing and countering all aspects of the world drug problem". This submission will focus on the impacts of drug policies on prison population, particularly regarding to the right to health and access to harm reduction in prison settings.

## II. Over incarceration of racialised and marginalised groups as an impact of punitive drug policy.

Although over 36 countries have removed criminal sanctions for drug possession for personal use, punitive responses to drug policy remain a key contributing factor to prison overcrowding.<sup>1</sup> An estimated of over 11.5 million people are incarcerated worldwide -with drug offences accounting for 22% of the global prison population.<sup>2</sup>

Despite the international law underscoring the State's obligation to protect the rights of all individuals and UN agencies highlighting the need for an evidence-based and human rights approach to drug policies<sup>3</sup>, marginalised groups, including people who use drugs, racial, ethnic minorities, and women, continue to be targeted by law enforcement and negatively impacted by punitive responses to drug policies,<sup>4</sup> resulting in the overrepresentation of these groups among the prison population. UNAIDS estimates that up to 90% of people who inject drugs will be incarcerated at some point in their life.<sup>5</sup> Research consistently shows that black people are systematically discriminated against in all stages of the criminal justice process, being disproportionately policed, arrested, harshly sentenced, and incarcerated for drug offences.<sup>6</sup> Data confirms the disproportionate impact of pre-trial detention and prison sentences for low-level drug offences on women.<sup>7</sup> Although women make up 6.9% of the prison population worldwide, this group has growth at a faster rate than men, increasing by 60% from 2000 to 2022, as opposed to 20% for the male population in the same period,<sup>8</sup> with 35% of women being imprisoned for drug offences globally.

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<sup>1</sup> Talking Drugs (2023) <https://www.talkingdrugs.org/drug-decriminalisation/>;

<sup>2</sup> Penal Reform International and Thailand Institute of Justice, (2023) Global Prison Trend 2022, page 8

<sup>3</sup> UN System Chief Executives Board for Coordination (2018), United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration, CEB/2018/2; UN (2021) United Nation System Common position on Incarceration, among others

<sup>4</sup> Daniels et al (2021), Decolonising Drug Policy, *Harm Reduction Journal*, 18:20, DOI <https://doi.org/10.1186/s12954-021-00564-7>; Harm Reduction International, (2021) The Harms of incarceration, DOI <https://hri.global/publications/the-harms-of-incarceration-the-evidence-base-and-human-rights-framework-for-decarceration-and-harm-reduction-in-prisons>

<sup>5</sup> UNAIDS, (2014) The Gap Report 2014. People who inject drugs, DOI: [https://www.unaids.org/sites/default/files/media\\_asset/05\\_Peoplewhoinjectdrugs.pdf](https://www.unaids.org/sites/default/files/media_asset/05_Peoplewhoinjectdrugs.pdf)

<sup>6</sup> Penal Reform International and Thailand Institute of Justice, (2023) Global Prison Trend 2022,

<sup>7</sup> Fair. H and Walmsley. R (2022), World Female Imprisonment List, Fifth edition, DOI [https://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_female\\_imprisonment\\_list\\_5th\\_edition.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/world_female_imprisonment_list_5th_edition.pdf).

<sup>8</sup> Bureau of Jail Management and Penology of the Philippines, (2023) *Daily PDL Population Monitoring*, April 2023; Bureau of Corrections of the Republic of the Philippines, (2023) *Statistics on prison congestion*, February 2023; congestion rates are calculated based on the official capacity reported in September 2021. See, 'World Prison Brief data: Philippines', *World Prison Brief*, <https://www.prisonstudies.org/country/philippines>

Prisons are high-risk environments for the transmission of diseases due to overcrowding, limited access to clean water and inadequate sanitary conditions, lack of healthcare and access to good-quality food, and mistreatment of people in detention, to name a few.<sup>9</sup> The over-representation of vulnerable groups, who are more likely to suffer from poor health, means many people in prison are at higher risk of becoming seriously ill if contracting a disease such as HIV. The COVID-19 pandemic exacerbated the structural problems of the prison system and often worsened inhumane living conditions with some measures implemented to control the spread of the virus having the effect of restricting the enjoyment of prisoners' rights.<sup>10</sup> HRI's research revealed that measures implemented in prisons during the pandemic seriously impacted the already limited provision of health and harm reduction services.<sup>11</sup> Before the pandemic, prison-based health and harm reduction services were already underfunded, inadequate and difficult to access.<sup>12</sup> The pandemic outbreak led to the implementation of extreme measures in prisons, which had – and continue to have – far reaching health and human rights implications for people in detention in the countries surveyed<sup>13</sup> with extreme measures continued to be implemented in prisons, and some health services still limited or suspended.

### III. The right to the highest attainable standard of health for people who use drugs and the state of harm reduction in prisons.

People who use drugs represent up to 50% the world's prison population.<sup>14</sup> Evidence shows that sharing injecting equipment – a common practice in prison – has been linked to outbreaks of HIV in prisons in Iran, Lithuania, Thailand, the United Kingdom and Ukraine.<sup>15</sup> Prison population is 7.2 times more likely to be living with HIV than the general community, with 3.2% of prisoners living with HIV, and 15.1% living with hepatitis C.<sup>16</sup> People in prison are also disproportionately vulnerable to overdose, both during their sentence and immediately after

<sup>9</sup> For more detail on prison conditions see Penal Reform International and Thailand Institute of Justice, (2023) Global Prison Trend 2022, page 11. DOI <https://www.penalreform.org/global-prison-trends-2022/>

<sup>10</sup> Prison Insider and Centre of Studies on Justice and Society PUC. (2021) "Managing Uncertainty in Prison: Diverse response to Covid-19" DOI <https://www.prison-insider.com/en/articles/managing-uncertainty-in-prison>; Prison Insider, Amnesty International and Thailand Institute of Justice (2021) "Forgotten Behind Bars: Covid-19 and Prisons" DOI <https://www.amnesty.org/en/documents/pol40/3818/2021/en/>; Penal Reform International (2021) "Global Prison Trend 2021" (2021). doi <https://www.prison-insider.com/en/articles/les-tendances-mondiales-de-l-incarceration>

<sup>11</sup> <https://www.prison-insider.com/en/articles/les-tendances-mondiales-de-l-incarceration> 2021?referrer=%2Fen%2Farticles%3Fpage%3D1%26tag%25B0%25D%3Drapport; Amy Fetting and The Sentencing Project (2022) "Can Covid-19 Teach Us how to End Mass Incarceration?" Doi <https://repository.law.miami.edu/umlr/vol76/iss2/3/#.YhUuXjVLWSc.twitter>; Prison Reform Trust (2020), "Beyond the Emergency of the Covid-19 Pandemic: Lessons for Defence Rights in Europe"; Amnesty International (2022) "Forgotten Behind Bars" doi <https://www.amnesty.org/en/documents/pol40/3818/2021/en/>

<sup>12</sup> HRI, Prisons After Covid-19: Beyond Emergency Measures, available at: <https://hri.global/publications/prison-after-covid-19-beyond-emergency-measures/>

<sup>13</sup> Including a lack of information about services; unequal or irregular provision of services; confidentiality issues; resource shortages; prison subcultures that prevent people accessing health services; and challenges in accessing records from external service providers – among others

<sup>14</sup> Benin, Burkina Faso, Canada, France, Ghana, Indonesia, Italy, Kenya, Kyrgyzstan, Mauritius, Mexico, Moldova, Nepal, Switzerland, and the UK.

<sup>15</sup> Dolan K, et al (2015) 'People who inject drugs in prison: HIV prevalence, transmission and prevention' (2015) International Journal of Drug Policy vol 26:S12-S15.

<sup>16</sup> Ibid.

<sup>16</sup> Dolan K, Wirtz AL, Moazen B, Ndeffo-mbah M, Galvani A, Kinner SA, et al. (2016) Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees. The Lancet 388(10049) 1089–102; UNAIDS (2021) HIV and people in prisons and other closed settings. Human Rights Fact Sheet Series DOI [https://www.unaids.org/sites/default/files/media\\_asset/06-hiv-human-rights-factsheet-prisons\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/06-hiv-human-rights-factsheet-prisons_en.pdf)

their release. Male and female prisoners are 19 and 69 times, respectively, more likely to die from an overdose than the non-prison population.<sup>17</sup>

**Specific obligations for protecting the health of people deprived of their liberty derive from their inherent dignity and value as human beings, as well as their rights to life, to health and to be free from torture and ill-treatment.**<sup>18</sup> The increased degree of vulnerability caused by incarceration put a heightened duty of care on the part of the State to protect their lives, and their physical and mental health. Following the “principle of equivalence”<sup>19</sup>, health care must be at least the same standard that is available in the broader community, including the provision of adequate health services that are closely linked to the general health service, continuity of care as people move between prisons and the broader community, including for infectious diseases and drug dependence<sup>20</sup>; provision of essential medicines, including methadone and buprenorphine,<sup>21</sup> and underlying determinants of health such as fresh air, clean water and adequate sanitation, non-discrimination, and active and informed participation in decisions affecting their health. As highlighted by the Council of Europe Pompidou Group, to guarantee high-quality healthcare in prisons for people who use drugs, the professional independence of health providers is crucial, which requires legal guarantees for clinical independence, and removing healthcare from penitentiary jurisdiction administration.<sup>22</sup> Pompidou Group has recommended in this regard to “consider transitioning authority over prison healthcare away from penitentiary administrations to specialised services within the ministry of justice or the ministry of health or other public health authorities”, as well as to “end involvement of healthcare staff in any custodial and disciplinary punishment measures and remove any influence of non-medical staff on clinical decisions by healthcare staff.”<sup>23</sup>

<sup>17</sup> Binswanger IA, Nowels C, Corsi KF, Glanz J, Long J, Booth RE, et al. (2012) Return to drug use and overdose after release from prison: a qualitative study of risk and protective factors. *Addict Sci Clin Pract* 7(1):3.

<sup>18</sup> Farrell M, Marsden J, Farrell M, Marsden J.(2005) Drug-related mortality among newly released offenders 1998-2000.

<sup>19</sup> Merrall ELC, Kariminia A, Binswanger IA, Hobbs MS, Farrell M, Marsden J, et al. (2010) Meta-analysis of drug-related deaths soon after release from prison. *Addiction* 2010;105(9):1545–54

<sup>18</sup> Art. 1 and 2 of the Universal Declaration of Human Rights; Art 6 of the International Covenant on Civil and Political Rights; Art, 12 of the International Covenant on Economic, Social and Cultural Rights; UN General Assembly (1990), Basic Principles for the Treatment of Prisoners, UNODC, et al. (2006), Prevention, Care, Treatment and Support in Prison Settings – A Framework for an Effective National Response; UNAIDS (1997), Prisons and AIDS; WHO (1993), Guidelines on HIV infection and AIDS in prisons; Istanbul Protocol (2002), UN Committee Against Torture (2014), Observations of the Commission against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners, UN Doc. CAT/C/51/4; among others

<sup>19</sup> UN General Assembly (1990), Basic Principles for the Treatment of Prisoners, Principle 9; UN General Assembly (8 January 2016), Revised UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 24(1); UNODC et al (2006), Prevention, Care, Treatment and Support in Prison Settings – A Framework for an Effective National Response; UN General Assembly (1982), Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/RES/37/194, Principle 1; Council of Europe, Committee of Ministers (1998), Recommendation No. R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organisational Aspects of Health Care in Prison, p. 40. UN (2021) United Nations System Common position on Incarceration; UN System Chief Executives Board for Coordination (2018), United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration, CEB/2018/2

<sup>20</sup> HRI, Prisons After Covid-19: Beyond Emergency Measures, available at: <https://hri.global/publications/prison-after-covid-19-beyond-emergency-measures/>

<sup>21</sup> drugs commonly used to treat opioid dependence

<sup>22</sup> Pompidou Group, Standards for treatment of people with drug use disorders in custodial settings, available at:

<https://rm.coe.int/0900001680a9b0cd>

<sup>23</sup> Ibid

**However, people in prison are still living in inhumane, unsafe conditions, lacking access to essential health services<sup>24</sup>.** The case is even worse when it comes to protecting the right to health for people who use drugs who often do not have access to comprehensive and adequate services including harm reduction and rehabilitation programs. As stated by the Special Rapporteur on torture and the Human Rights Committee, pain and suffering of people in detention associated with withdrawal symptoms could amount to torture or ill-treatment.<sup>25</sup> The European Court of Human Rights (ECtHR) has found that the lack of access to comprehensive and adequate medical care in detention, including drug substitution treatment for prisoners with drug addiction, amounts to a breach of the prohibition of ill-treatment under Article 3 of the European Convention on Human Rights, and that in case of imprisonment, the continuity of the substitution treatment started outside prison must be secured<sup>26</sup>

The Global State of Harm Reduction 2022 (GSHR) reveals that despite States' obligations, people in prison are still severely underserved by harm reduction services, showing little expansion since 2020.<sup>27</sup> The number of Opioid Agonist Therapy (OAT) remain unchanged at 59 countries providing the service in at least one prison. While OAT programmes are now operating in prisons in Kosovo, Macau, and Tanzania, this is balanced by new data indicating that prisons in Georgia, Hungary and Jordan only offer opioid agonists for detoxification. The scenario is even worse when it comes to the provision of Needle and Syringe Programmes (NSPs) with only 10 countries operating NSPs in at least one prison.<sup>28</sup> There is no NSPs, OAT or naloxone in Latin America and West Central Africa. Canada has the only world's prison-based drug consumption room (DCR).

**Harm reduction in prisons is not only a cost effective and safe measure<sup>29</sup>, but also a human right obligation.** The Special Rapporteur on the right to health urged States to make harm reduction services, including OAT, available to people in prison without discrimination. She further emphasised that harm reduction and health services must be tailored to the specific needs of people in prison and that medical considerations must prevail over security and punitive aspects and medical practitioners in prison should be independent from the prison staff.<sup>30</sup>

**The fact that harm reduction is somehow available in a prison does not mean that is accessible for all prison population.** While OAT is available in most Western European region,

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<sup>24</sup> Penal Reform International and Thailand Institute of Justice, (2023) Global Prison Trend 2022, page 29-34

<sup>25</sup> Human Rights Committee (2015), Concluding observations of the seventh periodic report of the Russian Federation, UN Doc. CCPR/C/RUS/CO/7, para. 16; Méndez J. (2013), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/22/53, para. 55.),

<sup>26</sup> European Court of Human Rights (2016), *Wenner v. Germany*, application no. 62303/13, 1 September 2016.

<sup>27</sup> HRI (2022), The Global State of Harm Reduction 2022, available at: <https://hri.global/flagship-research/the-global-state-of-harm-reduction/>

<sup>28</sup> Armenia, Canada, Germany, Kyrgyzstan, Luxemburg, Moldova, North Macedonia, Spain, Switzerland and Tajikistan. Updated information has also revealed France is delivering NSPs in at least one prison Montpelier.

<sup>29</sup> Harm Reduction International and HRAsia (2021) Divest. Redirect. Invest. The case for redirecting funds from ineffective drug law enforcement to harm reduction – spotlight on six countries in Asia DOI <https://hri.global/publications/divest-redirect-invest-the-case-for-redirecting-funds-from-ineffective-drug-law-enforcement-to-harm-reduction-spotlight-on-six-countries-in-asia/>

<sup>30</sup> EPLN (2023), Harm reduction in Eastern European prisons: Ensuring equivalence of care for people who use drugs in prison, DOI <http://www.prisonlitigation.org/cnd-prison-healthcare-2023/>



with twenty countries providing that service in prisons, it is still insufficiently accessible, and in some cases it is not possible to start OAT while incarcerated.<sup>31</sup> NSPs are available in four countries in the region<sup>32</sup>, but not evenly implemented in all prisons<sup>33</sup>. Similarly, although twenty countries provide OAT for maintenance in Eurasia region, it is not widely accessible. In Albania, Latvia, Montenegro and Serbia, people cannot start OAT while in prison and it is only available if people were on OAT before being incarcerated. While NSPs is available in four countries in Eurasia, there certain barriers that limit the access to harm reduction in prisons. Research in Moldova in 2021 revealed a number of concerns related to the accessibility of NSPs in prisons, including confidentiality issues and discrimination. In Eastern and South Africa, only 5 countries<sup>34</sup> provide OAT. While, all countries in that region provide HIV testing and treatment inside prisons, there are many documented barriers to access, particularly for women who use drugs, including humiliating and punitive treatment.

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<sup>31</sup> Portugal, OAT is available in 49 prisons, but initiation of OAT is only possible in four, thus OAT is predominantly only available to people who started OAT before going to prison. Italy, despite OAT being available in all prisons, due to bureaucratic barriers it is difficult to enrol in OAT from prison.

<sup>32</sup> Germany, Luxembourg, Spain, Switzerland

<sup>33</sup> One of two prisons in Luxembourg, in one women's prison in Germany (a syringe-dispensing machine), in 15 prisons in Switzerland (covering one fifth of people in prison in the country), and in a decreasing number of facilities in Spain (47 in 2019)

<sup>34</sup> Eswatini, Kenya, Mauritius, Seychelles and Tanzania