

Contributions from the Civil Society Forum on Drugs to the EU-Brazil bilateral meeting on drugs

March 2020

In preparation for the bilateral meeting on drug policy between the EU and Brazil, the EU Civil Society Forum on Drugs (CSFD) has drafted this contribution, highlighting key issues of concern which we hope that the EU will find useful and may raise with the Brazilian delegation.

Meeting minimum quality standards in the provision of drug dependence treatment

Brazil has experienced a major shift in the provision of mental health and drug dependence treatment services since 1987. Initially, the government started closing private institutions, reducing the number of beds (up to 60,000 vacancies were eliminated in 10 years), and building a new approach based on communitarian psychosocial attention centres. As a result, religious-oriented ‘treatment facilities’ started to flourish. Drug treatment providers whose work is evidence-based and that comply with international standards of treatment are heavily affected by the appearance of such unprofessional drug ‘treatment facilities’. One of the most affected actors are the organisations that run therapeutic communities for residential treatment, as their name has wrongly been used to define some of these religious-oriented pseudo-treatment facilities and their model has been repudiated.

There are major concerns regarding the rapid increase of these ‘treatment facilities’ which do not comply with minimum quality standards for the treatment of drug dependence, including the fact that some facilities:

- Do not constitute effective scientific evidence-based treatment as they are based on ‘labour therapy’, raising crucial ethical and legal concerns;¹
- Are not always respectful of the principle of voluntary participation in treatment programmes²
- Go against international standards on the right to health, the right to liberty and security (prohibition of arbitrary detention) and the prohibition of inhumane and degrading treatment.

Even more problematic is the fact that the government decided to freeze social spending, including for healthcare, but are bypassing this decision by providing funding for these facilities.

We urge the EU to highlight the need for evidence-based drug dependence treatment, based on UNGASS recommendations, and international human rights law and standards, and to share best practice experiences from EU member states in this domain.

¹ See UNGASS Outcome Document para 1i

² See UNGASS Outcome Document para 1j

Lack of support for, and implementation of, essential harm reduction services

Updated and disaggregated information on the number of people who use drugs in the country is limited. The UN Office on Drugs and Crime (UNODC) reports a 1% prevalence of cocaine use in Brazil, and a 0.1% prevalence of heroin use as of 2017,³ while HIV prevalence among people who inject drugs is estimated at 9.9%.⁴

Harm reduction has been recognised as an essential component of the right to health,⁵ and it is critical that harm reduction services be available and accessible for all people who use drugs, regardless of the substance they use and the consumption method. For example, studies conducted in Brazil suggest that people who use crack and cocaine paste are more vulnerable to hepatitis infection;⁶ a 2017 study also found a 2.8% HIV prevalence among people who use crack in Goiás, Brazil – compared with a national prevalence of 0.6% among the general population.⁷

Nevertheless, according to the 2018 *Global State of Harm Reduction* there are no Needle and Syringe Programmes nor Opioid Agonist Therapy available in the country. This is due in part to the small numbers of people who inject drugs and people who use opioids, but also to a lack of political support for harm reduction. Some services are available for people who use cocaine and cocaine derivatives such as crack (mirroring high levels of cocaine and cocaine derivatives use in the country),⁸ but these are limited in their capacity to respond to the number of people seeking services. Service providers also report concerns about a hostile political environment which may further limit their ability to provide services.⁹

In recent years, the local and national governments have demonstrated a general lack of support for harm reduction, and pushed for an increasingly punitive drug policy. The Bolsonaro Government, in power since 2016, also streamlined a punitive approach to drugs. A new drug strategy was implemented in 2018 explicitly rejecting the harm reduction approach and closing several programmes, and/or replacing them with abstinence-based, rehabilitation-focused and law enforcement-led projects.¹⁰ At local level, in 2016 the São Paulo administration closed down the 'De Braços Abertos' (Open Arms) project operated in Crâcolândia (a stigmatising name for the open crack scene), and its replacement with the Redenção (Redemption) project. Whereas De Braços Abertos provided health, employment and accommodation support to people who use crack with no precondition of abstinence or treatment, the Redenção project reportedly requires that participants abstain from drug use and undergo mandatory drug tests.¹¹ In its first eight months of operation, Redenção saw an adherence rate of just 17%.¹²

Harm reduction and abstinence-based programmes are not incompatible in nature, but rather are complementary and can function side by side as a wide range of evidence-, human rights- and voluntary-based

³ See UNODC Statistics and data, Annual Prevalence of Drug Use. Available at: https://dataunodc.un.org/drugs/prevalence_table-2017

⁴ Stone, K and Shirley-Beavan, S (2018), *The Global State of Harm Reduction 2018*. Harm Reduction International: London, p. 96. Available at <https://www.hri.global/files/2019/02/05/global-state-harm-reduction-2018.pdf>

⁵ Among others, see: Paul Hunt, 'Human rights, health, and harm reduction', 8; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2010) A/65/255, para. 55; CESCR, Concluding Observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2; CEDAW, Concluding Observations on the combined fourth and fifth periodic reports of Georgia (2014), UN Doc. CEDAW/C/GEO/CO/4-5, para. 31(e); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Poland (2010) A/HRC/14/20/Add.3, para. 86; CESCR, 2016, Concluding Observations on the sixth periodic report of Sweden. UN Doc. E/C.12/SWE/CO/6. Human Rights Committee in E/C.12/RUS/CO/5, E/C.12/LTU/CO/2, E/C.12/EST/CO/2 and E/C.12/UKR/CO/5. UN General Assembly Resolutions A/65/277. Human Rights Council Resolution A/12/27. For more information, see: International Centre on Human Rights and Drug Policy/UNDP, International Guidelines on Human Rights and Drug Policy

⁶ Stone, K and Shirley-Beavan, S (2018), *The Global State of Harm Reduction 2018*. Harm Reduction International: London, p. 103

⁷ Ibid., p. 104

⁸ Stone, K and Shirley-Beavan, S (2018), *The Global State of Harm Reduction 2018*. Harm Reduction International: London,

⁹ See Rigoni, R, Brecksema, J and Woods, S (2018), *Speed Limits: Harm Reduction for People Who Use Stimulants*, Mainline: Amsterdam. Available at: <https://english.mainline.nl/posts/show/11665/harm-reduction-for-people-who-use-crack-a-best-practice-from-brazil>

¹⁰ Ibid.

¹¹ It should be noted that mandatory drug testing violates human rights and public health standards mandating that testing be voluntary

¹² Stone, K and Shirley-Beavan, S (2018), *The Global State of Harm Reduction 2018*. Harm Reduction International: London

services to respond to the complex needs and choices of each person who uses drugs. The clear shift towards an abstinence-only rhetoric is therefore highly problematic.

We call on the EU to promote and fund evidence-based, human rights-based approaches to drug policy, including key harm reduction interventions (NSP, OAT) for people who use drugs, including women who use drugs, people who use cocaine and its derivatives, and people who inject drugs.

Criminalisation of people who use drugs and inhumane conditions of detention

Brazil's drug policy is predominantly punitive. Law 11343/06 (adopted in 2006) is centred around a distinction between drug use – that remains criminalised but should not be punished with incarceration – and drug trafficking, for which severe criminal penalties were increased. However, in the absence of a clear definition of the two, discretion was left to the courts, resulting in the increased and widespread incarceration of people who use drugs.

The recourse to punishment and incarceration as the primary means to combat drugs has led to a dramatic increase in the prison population of Brazil, which is now the highest in the world after the United States and China. Between 2006 and 2014 the prison population grew 55% (against an 8% growth in the general population) and the number of people incarcerated for any drug offence grew by 267%.¹³ As of June 2019, 773,151 were incarcerated in Brazil, of which 39.4% for drug offences alone.¹⁴ The percentage is even greater in the female prison population, 56.16% of whom were in prison for drug crimes.¹⁵ Around 40% of those incarcerated are in pre-trial detention, and may await trial for years.¹⁶ People charged with drug offences are overrepresented amongst this populations, as the classification of 'drug trafficking' as a heinous crime in national legislation limits the chances of bail and alternative punishment.¹⁷

People incarcerated for drug offences are disproportionately from 'ethnic minorities, of low socio-economic status, and of low educational attainment'.¹⁸ Of those incarcerated, almost 60% are first-time offenders, and most were arrested for possessing less than 100 grams of cannabis or cocaine.¹⁹ During his latest visit to the country in 2016, the UN Special Rapporteur on torture expressed preoccupation at reports that most people incarcerated for drug offences are people who use drugs or small-scale dealers.²⁰

As a consequence, prisons are chronically overcrowded.²¹ Conditions of detention are often poor and inhumane, with widespread violence as well as lack of adequate water, sanitation, ventilation, and healthcare reported.²² This is despite the fact that people in detention are more vulnerable to developing health conditions, including TB and HIV. A recent report by the Yale Global Health Justice Partnership suggests that mass incarceration for drug offences in Brazil – which impacts disproportionately on the poorest and on marginalised groups – plays a central role in driving TB infections not only in prison but also in the general population.²³ Mirroring the lack of harm reduction services in the community, there are no harm reduction

¹³ Ibid., p. 104

¹⁴ Departamento Penitenciário Nacional, Levantamento Nacional de Informações Penitenciárias, Junho de 2019. Available at: <https://app.powerbi.com/view?r=eyJrIjoiaMTViZDQyODUtN2FiMi00ZjFkLTlhZmItNzQ4YzYwNGMxZjQzIiwidCI6ImVmdkwnNDIwLTQ0NGMtNDNmNy05MWYyLTJiOGRhNmJmZThlMSJ9>

¹⁵ Ibid

¹⁶ Broach, S, Petrone, M, Ryan, J and Sivaram, A (2019), *Reservoirs of Injustice: How incarceration for drug-related offences fuels the spread of tuberculosis in Brazil*. Yale Global Health Justice Partnership: New Haven, p. 22. Available at: <https://bit.ly/2w1VHOe>

¹⁷ Ibid, p. 22

¹⁸ Ibid., p. 7

¹⁹ Ibid., p. 24

²⁰ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment on his mission to Brazil (29 January 2016), UN Doc. A/HRC/31/57/Add.4. Para. 22

²¹ Broach, S, Petrone, M, Ryan, J and Sivaram, A (2019), *Reservoirs of Injustice: How incarceration for drug-related offences fuels the spread of tuberculosis in Brazil*. Yale Global Health Justice Partnership: New Haven

²² Ibid., p.13

²³ Broach, S, Petrone, M, Ryan, J and Sivaram, A (2019), *Reservoirs of Injustice: How incarceration for drug-related offences fuels the spread of tuberculosis in Brazil*. Yale Global Health Justice Partnership: New Haven, p. 22

services in Brazilian prison, again in violation of human rights standards,²⁴ as well as UN guidelines on HIV prevention, treatment and care in closed settings²⁵ and the UNGASS Outcome Document.

We call on the EU to discuss the need for Brazil to address the lack of clarity in the 2006 Drug Law regarding the differentiation between drug use and drug trafficking, as a first step towards alternatives to punishment for drug use, possession for personal use, and small-scale dealing, based on the experiences of EU member states.

We also urge the EU to engage in a dialogue with Brazil on the need for drug policy and criminal justice reform, with particular attention given to the regime of pre-trial detention, with the aim of reducing prison overcrowding.

Availability and accessibility of opioids for medical purposes

Although the availability of opioids for medical purposes has improved over the years, there continues to be a severe lack of availability. The distributed opioid morphine equivalent (morphine in mg / patient in need of palliative care, average 2010-2013) was 1264 and the estimated percentage of need that is met for health conditions most associated with serious health related suffering was 74%. This is compared to 18,316 mg and 870% in Western Europe.²⁶

Overall the use of opioids is low and this may be due to the use of opioids primarily for cancer pain, lower acceptance in the population as they may be associated with end-of-life care, extensive control systems of the prescription of opioids, high cost, and low availability and development of palliative care in Brazil.²⁷

These issues need to be addressed so that the many people with pain and distress, particularly at the end of life, can be helped and pain managed effectively.

We call on the EU to highlight the key issue of access to controlled medicines with Brazil, and the need for reforms based on the operational recommendations of the UNGASS Outcome Document and the CND resolution being presented by the EU at this year's CND.

The shrinking space for civil society

Since Jair Bolsonaro came into power in January 2019, the Federal Government of Brazil has consistently worked to reduce the space of civil society. For instance, the government decided to dismantle several participatory bodies that allowed for civil society to inform and monitor governmental action on key human rights issues, such as the National Mechanism to Prevent and Combat Torture (dismantled in June 2019),²⁸ or the National Committee on the Rights of the Child (dismantled in September 2019).²⁹ In his first day in power

²⁴ Among others, see Human Rights Council. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (1 February 2013), para. 54. UN Doc A/HRC/22/53; Human Rights Committee. Concluding observations on the seventh periodic report of the Russian Federation (28 April 2015), para. 16. UN Doc. CCPR/C/RUS/CO/7; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, U.N. Doc. A/HRC/10/44 (Jan. 14, 2009) (by Manfred Nowak). Para 74; European Court of Human Rights *Wenner v. Germany* App. 62303/13 (1 September 2016).

²⁵ UNODC, ILO, UNDP, WHO, UNAIDS (2013), *HIV prevention, treatment and care in prison and other closed settings: a comprehensive package of interventions*. Available at: https://www.who.int/hiv/pub/prisons/interventions_package/en/

²⁶ Knaul et al. Alleviating the access abyss in palliative care and pain relief – an imperative of universal health coverage: *The Lancet* Commission report. *The Lancet* 2018; 391: 1391- 1454.

²⁷ da Silva Dal Pizzol T, Fontanella AT, Ferreira MBC et al. Analgesic use among the Brazilian population: Results from the National Survey on Access, Use and Promotion of Rational Use of Medicines (PNAUM). *PLoS One*. 2019; 14(3): e0214329. doi: [10.1371/journal.pone.0214329](https://doi.org/10.1371/journal.pone.0214329)

²⁸ See <https://www.omct.org/statements/2019/06/d25382/>.

²⁹ See <https://www.fairplanet.org/editors-pick/protecting-kids-in-brazil-by-dismantling-the-council-for-children%E2%80%99s-rights/>.

Mr. Bolsonaro signed an executive order that gave to the office of the Government's Secretary – occupied by a retired army general – extraordinary supervisory powers over international organisations and non-governmental organisations working in Brazil.³⁰ This has had a severe impact on the space of civil society organisations working in the area of drug policy in shaping, delivering and assessing drug policies, especially organisations of people who use drugs, of indigenous peoples and other affected groups.

The UNGASS Outcome Document commits member states, including Brazil, to ensure that civil society, especially affected communities, should be enabled to play a participatory role in the formulation, implementation and evaluation of drug policies and programmes.³¹ We call on the EU to express concern at the current situation of civil society organisations in Brazil, and to urge the authorities of Brazil to respect and expand the space of civil society organisations in shaping, delivering and assessing drug policies, especially organisation of people who use drugs, and organisations of indigenous peoples.

The Civil Society Forum on Drugs (CSFD) is an [expert group of the European Commission](#) that was created in 2007 on the basis of the [Commission Green Paper](#) on the role of civil society in drugs policy in the EU. Its purpose is to provide a broad platform for a structured dialogue between the Commission and the European civil society which supports drug policy formulation and implementation through practical advice. The CSFD is consistent with the [EU Strategy on Drugs 2013-2020](#) and the new [Action Plan on Drugs 2017-2020](#) both of which require the active and meaningful participation and involvement of civil society organisations (CSOs) in the development and implementation of drug policies, at national, EU and international level. Its membership comprises 45 CSOs from across Europe and representing a variety of fields of drug policy, and a variety of stances within those fields. Membership is renewed every three years, and the last call was in March 2018. List of CSFD members:

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| 1. ABD - Associació Benestar i Desenvolupament | 24. FUNDACIÓN ATENEA |
| 2. AFEW International | 25. GAT - Grupo de Ativistas em Tratamentos |
| 3. AIDES | 26. HRI - Harm Reduction International |
| 4. Ana Liffey Drug Project | 27. IDPC - International Drug Policy Consortium |
| 5. APDES - Agência Piaget para o Desenvolvimento | 28. INPUD - International Network of People who use Drugs |
| 6. APH - Association Proyecto Hombre | 29. IREFREA - Instituto Europeo de Estudios en Prevención |
| 7. ARAS - Romanian Association Against AIDS | 30. MAT - Magyar Addiktológiai Társaság |
| 8. Citywide Drugs Crisis Campaign | 31. Médicos del Mundo España |
| 9. De Regenboog Groep | 32. PARSEC Consortium |
| 10. Dianova International | 33. Polish Drug Policy Network |
| 11. Diogenis Drug Policy Dialogue | 34. Prekursor Foundation for Social Policy |
| 12. EAPC - European Association for Palliative Care | 35. Proslavi Oporavak |
| 13. EATG - European AIDS Treatment Group | 36. Romanian Harm Reduction Network |
| 14. ECAD - European Cities Network for Drug Free Societies | 37. Rights Reporter Foundation |
| 15. EFSU - European Forum for Urban Security | 38. San Patrignano |
| 16. ENLACE | 39. SANANIM |
| 17. EURAD | 40. SDF - Scottish Drugs Forum |
| 18. EuroTC - European Treatment Centres for Drug Addiction | 41. UNAD |
| 19. EUSPR - European Society for Prevention Research | 42. UTRIP |
| 20. FAD - Fundación de Ayuda contra la Drogadicción | 43. WFAD - World Federation Against Drugs |
| 21. Federation Addiction | 44. WOCAD |
| 22. FEDITO BXL | 45. YODA - Youth Organisations for Drug Action |
| 23. Forum Droghe | |

³⁰ See: <https://www.reuters.com/article/us-brazil-politics-ngos/bolsonaro-presidential-decree-grants-sweeping-powers-over-ngos-in-brazil-idUSKCN1OW1P8>

³¹ UNGASS Outcome Document, preamble