

**Reinterpreting Article 33 of the Convention on the Rights of the Child: A Case for Harm
Reduction as a Rights-Based Approach to Child Protection.**

By

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Abstract

Article 33 of the UN Convention on the Rights of the Child (CRC) obligates state parties to take “all appropriate measures” to protect children from illicit drug use. However, the interpretation and implementation of this ever so ambiguous provision has largely focused on punitive and abstinence-based strategies. This is exemplified by the lack of substantive commentary on Article 33 by the Committee on the Rights of the Child, with current discourse and policy development predominantly shaped by bodies whose primary mandate lies outside the realm of children’s rights; UN Commission on Narcotic Drugs (CND), UN Office of Drugs and Crime, and the International Narcotics Control Board.

In view of the foregoing jurisprudential complexities, this study critically examines the potential of reinterpreting Article 33 of the UN Convention on the Rights of the Child through a harm reduction lens to challenge systemic inequalities in current drug policies. It investigates how such a reinterpretation might fulfill states obligations to ensure non-discrimination and equal protection under international human rights law, particularly for BIPOC and unhoused children. The research scrutinizes the stark disparities in treatment between affluent youth engaging in drug use within their confines of privilege and the disproportionate criminalization of marginalized children for similar behaviors.

The central argument posits that current abstinence-only approaches within the human rights paradigm fail to uphold children’s rights to health, protection from harm, and non-discrimination, and proposes harm reduction as a more effective and rights-compliant strategy. Moreover, I contend that, in re-interpreting Article 33 of the CRC to encompass evidence-based harm reduction strategies, state parties as duty bearers may more effectively fulfill their obligations under the CRC while addressing the complex, intersecting vulnerabilities faced by diverse youth populations. In examining how harm reduction approaches can be integrated into the interpretation of Article 33, this study aims to provide a more comprehensive and rights-based framework for addressing substance use among children. One that transcends the pervasive application of a normative single-axis framework, to contribute to a more nuanced understanding of how international human rights law can adapt to evolving public health approaches while adhering to its overarching mandate of best interest and protective intent for children.

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1.0 INTRODUCTION

“Law is inherently genealogical, depending as it does upon the movement of concepts, languages and norms across time and even space. The past, far from being gone, is constantly being retrieved as a source of rationalisation of present obligation”.¹ Pursuant to Article 33 of the UN Convention on the Rights of the Child (CRC), state parties are obligated to take “all appropriate measures” to protect children from illicit drug use.² However, the interpretation and implementation of this ever so ambiguous provision has largely focused on punitive and abstinence-based strategies. This is exemplified by the lack of substantive commentary on Article 33 by the Committee on the Rights of the Child, with current discourse and policy development predominantly shaped by bodies whose primary mandate lies outside the realm of children’s rights; UN Commission on Narcotic Drugs (CND), UN Office of Drugs and Crime, and the International Narcotics Control Board.

This presumes the matter in question, to what extent does the current interpretation and implementation of Article 33 conflict with other rights delineated in the CRC, such as the right to

¹ Anne Orford, "On International Legal Method," *London Review of International Law* 1, no. 1 (2013): 174, <https://academic.oup.com/lril/article/1/1/166/1022549>

² See United Nations, Convention on the Rights of the Child, 20 November 1989, Treaty Series, vol. 1577, p. 3, art. 33, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

health, non-discrimination, and the best interests of the child? Does the ambiguity surrounding the term “appropriate measures” leave room for interpretation as to encompass evidence-based harm reduction strategies? Is there a stark disparity between the treatment of affluent youth who engage in illicit drug use within the protected confines of privilege, and the disproportionate criminalization of marginalized children for the same behaviors? Is it overly ambitious to assume that a reinterpretation of Article 33 of the CRC through a harm reduction lens can challenge the systemic inequalities inherent in current drug policies, and to what extent does such a reinterpretation fulfill states obligations to ensure non-discrimination and equal protection under international human rights law for BIPOC, as well as unhoused children?

The central argument in this paper is that current abstinence-only approaches within the human rights paradigm fail to uphold children’s rights to health, protection from harm, and non-discrimination, and proposes harm reduction as a more effective and rights-compliant strategy. Moreover, I contend that, in re-interpreting Article 33 of the CRC to encompass evidence-based harm reduction strategies, state parties as duty bearers may more effectively fulfill their obligations under the CRC while addressing the complex, intersecting vulnerabilities faced by diverse youth populations. In examining how harm reduction approaches can be integrated into the interpretation of Article 33, this study aims to provide a more comprehensive and rights-based framework for addressing substance use among children. One that transcends the pervasive application of a normative single-axis framework, to contribute to a more nuanced understanding of how international human rights law can adapt to evolving public health approaches while adhering to its overarching mandate of best interest and protective intent for children.

To substantiate the aforementioned claim, this study will conduct a comprehensive examination of primary and secondary sources. The primary sources include the CRC; Article 33 and the general principles of the Convention; Article 2, 3, 6, 12 respectively, as well as other key international human rights law instruments; International Covenant on Economic, Social and Cultural Rights, (ICESCR) and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The research will also incorporate relevant secondary sources consisting of statistical data, action plans and regulations on paediatric care and substance use, as well as General Comments by the Committee on the Rights of the Child, NGO submissions, UN resolutions, agency reports; United Nations Children’s Fund (UNICEF), World Health Organization (WHO), Commission on Narcotic Drugs (CND), United Nations Office on Drugs and Crime (UNODC) and Legal Scholarly materials.

In centering the experiences of both BIPOC & 2SLGBTQIA+ unhoused children within this analysis, it is imperative to clarify that this focus is not to reproduce or reinforce epistemic violence by pathologizing these communities as inherently linked to houselessness or substance use. Rather, this study intends to foreground the structural and systemic forces, consisting of discriminatory policing and heteronormative assumptions - that continue to disproportionately expose these communities to housing precarity and the drug-related harms addressed by Article 33 of the Convention on the rights of the Child.

This paper deliberately employs the terms “substance use” and “children who use drugs” as an affirming choice of terminology that acknowledges that stigmatizing language can perpetuate harmful stereotypes, create barriers to accessing health services, and undermine the realization of the right to health and the right to non-discrimination for peoples. In conducting this study, it is paramount to openly recognize my identity and positionality, as a housed cisgender heterosexual woman of color along with the ramifications they entail within the framework of this study. I hold a profound awareness of the historical mistreatment, epistemic violence and exploitation that Black, Indigenous, and People of colour (BIPOC) communities have long endured within the sphere of academic research. As a woman of colour who has too endured the harmful repercussions of colonial narratives and systemic oppressions, my commitment lies in grounding my study in reflexivity, intersectionality, and anti-oppressive principles, which includes but is not limited to centering BIPOC voices, legal scholars, and perspectives within my methodology.

1.1 DEFINITION AND KEY TERMINOLOGIES

To facilitate the understanding of this study, the following terms and concepts are defined herein.

Harm Reduction. – For the purposes of this study, “harm reduction is a best practice model for providing services in health care and social service programming for people who use substances and are impacted by colonial and structural violence; particularly the War on (BIPOC) People Who Use Drugs”.³ This definition goes beyond safe supervised consumption sites, needle distribution, methadone clinics, to meeting people where they are at, navigating and challenging

³ “Workshops,” Manitoba Harm Reduction Network, accessed June 3, 2025, <https://mhrn.ca/workshops>.

colonialism under international drug control, as well as those very systems that create harms to people who use drugs.

PWUDs (People Who Use Drugs). - Within the scope of this study, the term PWUDs is used to refer to the broad term of people who inject, smoke, or otherwise consume drugs.

State - Sanctioned Violence. – In relation to the subject matter within this paper, the term state-sanctioned violence is used to signify the manner in which states, with respect to colonial and settler colonial states – particularly in Europe and the Americas - have historically and contemporarily legitimized the systematic exploitation of Black, Brown and Indigenous youth who use drugs through law-preserving and law-making policies. This definition draws from critical legal theorists and abolitionists who emphasize how the colonial state’s monopoly on legitimate force is perpetrated against minorities under the pretense of public safety and social order.⁴

Houselessness. – Within the scope of this study, houselessness as opposed to homelessness will be used to connote the lack of adequate housing for an individual. This is because the term homelessness reinforces stigmatization and carries a lack of consideration for the interplay of socio-economic and political factors that contribute to the lack of a stable living arrangement for an individual. This is also cognizant of the varying interpretation of homelessness among indigenous peoples as being isolated from their relationships to land, water, place, family, kin, each other, animals, cultures, languages and identities.⁵

Intersectionality. – This refers to an analytical framework that examines how different social categories such as gender, age, race, ability, substance use, and class intersect and reinforce one another to create complex and distinct kinds of oppression and discrimination.⁶

⁴ Cecilia Menjivar and Leisy J. Abrego, “Legal Violence: Immigration Law and the Lives of Central American Immigrants,” *American Journal of Sociology* 117, no. 5 (2012): 1380–1421.

⁵ Homeless Hub. “How Many People Are Homeless in Canada?” Homeless Hub, 2021. <https://homelesshub.ca/collection/homelessness-101/how-many-people-homeless-canada/>.

⁶ Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color,” *Stanford Law Review* 43, no. 6 (July 1991): 1241–1299.

2.0 OVERVIEW OF INTERNATIONAL HUMAN RIGHTS LAW AND DRUG POLICY: IMPLICATIONS FOR CHILDREN’S RIGHTS

2.1 ARTICLE 33 OF THE CRC: A CRITICAL ANALYSIS OF THE INTERNATIONAL FRAMEWORK ON CHILDREN AND THE ILLICIT USE OF NARCOTICS AND PSYCHOTROPIC SUBSTANCES

Article 33 of the CRC obligates states to “take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances”. At face value, the provision reflects a collective and quite sympathetic notion of children as those most exploited and needing protection from the “drug war”. However, a critical legal analysis reveals that the indeterminate phrasing of Article 33, particularly the use of “appropriate measures”, affords states an expansive margin of discretion. To enumerate, the normative underpinnings of Article 33 are rooted in the punitive notions of the international drug control regime rather than the overarching protective mandate of human rights law. Not to mention, when observed from a domestic legal standpoint, the translation of these norms into effective, rights-respecting practice is fraught with doctrinal ambiguities, implementation gaps and tensions around morality.⁷

Paramount to this analysis is the travaux préparatoires or otherwise connoted as the drafting process of the CRC, which reveals that access to treatment for both children and adolescents who are drug dependent were not foremost in the minds of the drafters of the CRC, evidently because it did not fit with the image of childhood floating around during the late 1980s negotiation process.⁸ The CRC emerged concurrently with this notion of children as “tragic victims of the drug scourge” and as “subjects needing and warranting protection from drugs”, as witnessed in repressive drug control architectures that were rooted in moral panics; rather than being grounded

⁷ See country variations in drug enforcements consisting of punitive detention practices, arbitrary age restrictions and state registries of drug users highlighted in Damon Barrett, "Juvenile Justice and Drug Use," in *Young People and Injecting Drug Use in Selected Countries of Central and Eastern Europe*, ed. Simona Merkinaitė and Jean Paul Grund (Vilnius: Eurasian Harm Reduction Network, 2009).

⁸ Damon Barrett and Philip E. Veerman, "Children Who Use Drugs: The Need for More Clarity on State Obligations in International Law," *International Journal on Human Rights and Drug Policy* 1 (2010): 63, <https://www.hr-dp.org/contents/126>

in holistic child welfare principles that align with the object and purpose of the convention.⁹ Indeed, this is evidenced by the close nexus of Article 38 (I) of the Single Convention on Narcotic Drugs (1961),¹⁰ Convention on Psychotropic Substances (1971)¹¹ and the Convention against Illicit Traffic in Narcotic and Psychotropic Substances (1988)¹² with Article 33 of the CRC. Collectively these treaties establish the international legal framework for drug control, with emphasis on criminalization, prohibition and supply reduction.

The moral panic narrative prevalent at the time shaped discourse, positioning children primarily as victims to be shielded via punitive regimes rather than as rights holders requiring comprehensive social supports. This discrepancy becomes even more pronounced when you take into consideration, the preamble to the 1961 UN Single Convention on Narcotic Drugs that stipulates that its main concern is with “the health and welfare of mankind” , “that addiction to narcotic drugs constitutes a serious evil for the individual and a socio-economic danger to mankind and “that they are conscious of their duty to prevent and combat this evil”. It then makes sense as to why Article 33, along with several children's rights remain a barely contested terrain, where any kind of move towards anything like harm reduction or legal regulation of drug production would be seen as immoral and a descent into anarchy where children would be the first and most obvious victims.¹³ However, recognizing the underlying politics of constructs such as “childhood” and “drugs” is essential if law and policy are meant to meaningfully engage with and uphold young people’s agency as legal and social actors. The impulse to protect children seems obvious and incontrovertible. Why should law, policy and practice not centre on the seemingly weak,

⁹ Damon Barrett, "The Child's Right to Protection from Drugs: Understanding History to Move Forward," *Health and Human Rights* 19, no. 1 (2017): 263–268.

¹⁰ Single Convention on Narcotic Drugs, 1961, March 30, 1961, United Nations, Treaty Series, vol. 520, p. 151.

¹¹ Convention on Psychotropic Substances, 1971, February 21, 1971, United Nations, Treaty Series, vol. 1019, p. 175.

¹² Convention against Illicit Traffic in Narcotic and Psychotropic Substances, 1988, December 20, 1988, United Nations, Treaty Series, vol. 1582, p. 95.

¹³ Damon Barrett, ed., *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People* (New York: International Debate Education Association, 2011).

vulnerable and impressionable? Yet, it is often the most self-evident of truths that demand the most focused critical attention.¹⁴

Despite its ostensibly protective intent, the implementation of Article 33 has been uneven and, in many jurisdictions, aligned with punitive drug policies. There is then plausible reason to question whether the CRC serves to alleviate these risks or if it instead provides a justification on the basis of children's rights for the actions that produce them. This convergence of legal frameworks that provide an overview of international drug control as opposed to one within the realm of international children rights law, provide two potential outcomes; drug control may be influenced by and moderated through child rights, or conversely, child rights may be increasingly aligned with and subsumed under drug control.¹⁵

Due regard must also be given to the mere fact that the Committee of the Rights of the Child has embraced and promoted incitement laws, which continue to become more prevalent in the periodic submissions to the Committee by state parties. This coherence is reflected in that neither the Committee nor the ILO Committee of Experts have ever contested the death sentence for drug offenses, with over half of the states that still apply it having reported doing so as part of their application of Article 33.¹⁶ Moreover, pursuant to Article 44(1) of the CRC, state parties must report to the CRC Committee on their compliance with the treaty initially after two years and thereafter every five.

At the very core lies the imperative to differentiate the manner in which children intersect with drug-related environments. Their involvement is far from monolithic; children may engage as autonomous users, exploited as instruments within the drug trade, or suffer indirectly as collateral victims of systemic oppression to familial substance use. Each of these scenarios raises distinct

¹⁴ Michel Foucault, *The History of Sexuality, Volume 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books, 2004), 24.

¹⁵ Damon Barrett, "The Child's Right to Protection from Drugs: Understanding History to Move Forward," *Health and Human Rights* 19, no. 1 (2017): 263–268.

¹⁶ Barrett, Damon. "International Child Rights Mechanisms and the Death Penalty for Drug Offences," *Human Rights Law Review* 17, no. 2 (2017): 205–229. <https://doi.org/10.1093/hrlr/ngx005>. See also the most recent resolution (at the time of writing) adopted in December 2014, see UN GA Res 69/196, Moratorium on the Use of the Death Penalty, A/RES/69/186, 4 February 2015. The Resolution received 117 votes in favour, 38 against and there were 34 abstentions.

legal questions regarding agency, culpability and the appropriate balance between protection and autonomy by state parties.

Accordingly, the interpretive mandate under Article 33 must be interpreted in line with the principles of effectiveness, ensuring that its protective measures achieve practical and substantive outcomes. Indeed, when analysing Article 33 of the Convention on the Rights of the Child (CRC), it is essential to contextualize the interpretation within the parameters set by Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT).¹⁷ While Article 33 may appear to grant states broad latitude, the contextual and purposive analysis demanded by the VCLT encourages a narrower interpretation that prioritizes protection and prevention over punitive or abstinence-only approaches. The purpose of Article 33, understood in this broader context, suggests that the occasional use of confinement could be legitimate but must align with the goal of protection and prevention consistent with the CRC's objectives as articulated in its preamble and substantive articles.

Building on the recognition that children's involvement in drug-related contexts is multifaceted and legally complex, the next chapter examines the reductive approaches within child drug enforcement and policing practices, with a specific focus on the intersecting forces of racialized oppression, socioeconomic marginalization, housing precarity, and the enduring juridical legacies of colonialism.

2.3 SYSTEMIC INEQUALITIES IN CHILD DRUG ENFORCEMENT AND POLICING PRACTICES

A. PUNITIVE APPROACHES VS. PROTECTIVE INTENT OF ARTICLE 33 OF THE CRC

The principle of protection constitutes a central tenet within the architecture of international human rights law, grounding both the scope and nature of state obligations as duty bearers towards their rights-holders, within, and increasingly outside of their jurisdiction. The scope of this obligation requiring more than merely abstention; it requires ongoing, deliberate measures both regulatory, preventive and remedial. However, the precises meaning as to what constitutes "protection"

¹⁷ Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, p. 331, Articles 31–32, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

remains heavily contested within the international realm, given the vast differences in legal and socio-political contexts across states. At the crux of this foregoing analysis is the notion of “protective intent”; as to whether, and to what extent or held threshold, state action or inaction can be characterized as genuinely reflecting human rights standards, rather than serving less rights-oriented, political expedience or acts taken for the simple maintenance of public order?

Building on the broader critique of punitive enforcement mechanisms under Article 33 of the CRC, Alberta’s Protection of Children Abusing Drugs (PChAD) Act exemplifies the tensions inherent in domestic implementation of the Convention’s protective mandate. The tension warranting rational analysis being whether the PChAD Act provides a coherent, rights-based framework or instead leaves excessive discretion to authorities and thus revealing doctrinal ambiguities within the threshold for state intervention and the definition of “significant risk”. Pursuant to the PChAD Act, a child’s guardian may authorize the court to grant protection orders that permit police to apprehend children and place them involuntarily in “protective safe houses” for detoxification and assessment, often without the child’s consent or meaningful participation.¹⁸ This broad discretionary display of power through using the term “protective safe house” perpetuates colonial harm under the guise of protection, particularly for Indigenous children whose familial and community support or experiences under the child welfare system may be excluded under a vague definition of protection.

Moreover, this process echoes Canada’s harmful history of colonial child removal policies, undermining and disrupting cultural connections fundamental to Indigenous identity and wellbeing. Without statutory or procedural safeguards requiring consideration of “protection” within indigenous cultural contexts the application of the PChAD Act’s seemingly ignores the rights guaranteed under Article 7 and 22 of the United Nations Declaration on the Rights of Indigenous People’s (UNDRIP), which affirm Indigenous people’s rights to maintain family integrity and protect children from forced displacement.¹⁹

¹⁸ Protection of Children Abusing Drugs Act, RSA 2000, c P-27.5 (Alberta), enacted July 1, 2006.

¹⁹ United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 61st Sess., October 2, 2007, arts. 7, 22.

Drawing upon the evidentiary reports of the Office of the Child and Youth Advocate (OCYA) of Alberta there is an urgent necessity for comprehensive legislative and policy reform of the Protection of Children Abusing Drugs Act (PChAD), that is aligned with internationally recognized norms, evidence-based treatment modalities, and binding human rights standards, including those codified within UNDRIP. To enumerate, the report examined 12 children who had multiple involuntary admissions to PChAD programs; all twelve children subsequently died, underscoring a profound failure of the Act's coercive intervention model to protect vulnerable children and improve their long-term outcomes.²⁰ This tragic evidence challenges the premise that state-mandated, short-term detention in "protective safe houses" functions as an effective or appropriate response to children who use substances. Irrefutably, this provides a stark empirical counterweight to enforcement-heavy approaches, reinforcing critical legal arguments that coercive protection orders and involuntary detention, often executed with police involvement paradoxically, may exacerbate harm rather than mitigate it. One that contravenes tripartite obligations to respect, protect, and fulfill children's rights by infringing on liberty and bodily integrity (CRC Articles 3, 12, 37) without delivering sustained health, communal or social benefits.²¹

The PChAD Act thereby operates at the nexus of protection and punishment, illustrating how ambiguous statutory language combined with heavy enforcement practices can distort the Convention's obligation for "all appropriate measures," ultimately perpetuating harm for children rather than fostering holistic and rights-based responses. This normative concern is reflected in international jurisprudence. In the precedent set by *Minors in Detention v. Honduras*, the Inter-American Commission on Human Rights emphasized that measures stamped as "protective" cannot be used as justification for deprivation of liberty or other forms of coercion without due process.²² The Court's reasoning echoes the notion that the absence of voluntary and social services catered to children who use drugs does not absolve the state of responsibility for rights violations that are out of proportion to their purported protective goals. Therefore, excessive use

²⁰ Office of the Child and Youth Advocate of Alberta, *Into Focus: Calling Attention to Youth Opioid Use in Alberta* (Edmonton: OCYA, June 2018), https://www.ocya.alberta.ca/wp-content/uploads/2014/08/InvRev_IntoFocus-OpioidRpt_2018June_v2.pdf.

²¹ United Nations Convention on the Rights of the Child, arts. 3, 12, 33, 37.

²² Inter-American Commission on Human Rights, *Report No. 78/99, Case 11.355: Minors in Detention v. Honduras*, OEA/Ser.L/V/II.106, doc. 6 rev. (1999).

of coercion without substantiation or protections for rights is a violation of states duties under CRC articles 3, 12, 33, and 37.²³

Correspondingly, the deliberate use of situating playgrounds on proposed locations of supervised consumption sites (SCS) illustrates how protective intent can be strategically deployed with contested effects, highlighting a need for nuanced legal and policy frameworks that respect both child protection and harm reduction imperatives. A strategy that mirrors “not in my neighbourhood (NYIMB)” tactics and mobilizes normative claims anchored in childhood vulnerability and community safety; not out of principle or evidence-based concerns, but rather due to fear and stigma. If the placement of playgrounds is utilized as a strategic method to obstruct the legitimate creation of healthcare services, such a precedent permits arbitrary and exclusionary urban planning practices against marginalized groups in the future, jeopardizing the core principles of equitable planning and due process.

The concept of protective intent thus demands a high threshold of proof grounded in international human rights law. States must move beyond formal declarations, embedding protection in clear legal standards, evidence-based interventions, comprehensive procedural safeguards, and robust monitoring systems. This creates a substantive litmus test that domestic child protection laws must meet to genuinely safeguard children’s rights, prevent punitive excesses, and fulfill their international obligations. Moving away from such rigor, laws like Alberta’s PChAD which risk perpetuating coercion and colonial legacies rather than protection, warranting urgent reform grounded in children’s rights and best practices.

B. SOCIOECONOMIC AND RACIAL DISPARITIES IN CHILD DRUG ENFORCEMENT PRACTICES

“The drug use is the symptom. The issue is homelessness. The issue is past trauma. The issue is violence. The issue is surviving. Sure, some people use recreationally, but that is not the issue”.²⁴

²³ United Nations General Assembly, Convention on the Rights of the Child, A/RES/44/25, November 20, 1989, arts. 3, 12, 33, 37.

²⁴ Community participant quoted in *Evaluation of Mobile Overdose Prevention Sites in Winnipeg* (Winnipeg: Manitoba Health, 2023), 14.

As discussed in depth, article 33 is applied as a legitimizing stamp for punitive state responses and within itself is an instrument of harm, especially when these measures are applied without any regard for root causes such as trauma, colonialism, houselessness, as well as the multiple bureaucratic barriers within the mental health system and current addictions treatment.

An indispensable tension arises with reference to Article 33's call of "appropriate measures" if interpreted narrowly as endorsing enforcement-first approaches, risking the entrenchment of further social and racial disparities.²⁵ When analysing this from a historical standpoint, the "war on drugs" in the United States wielded the criminal justice system to decimate BIPOC families through policies like mandatory sentencing, which disproportionately targeted Black communities, contributing directly to familial rupture and intergenerational harm.²⁶ While Turtle Island also mirrors this dark systemic past through overwhelming rates of indigenous child apprehensions, often tied to parental or youth substance use.²⁷ A practice that systematically disregards giving any legal weight to indigenous cultural approaches of healing and instead echoes state sanctioned violence, as witnessed through residential schools and the sixties scoop. This convergence of historic colonialism, intersectional racial oppression, and punitive drug policies promotes a legal and social context where BIPOC children face criminalization for substance use more often and more severely than their white peers.

Of equal importance, is acknowledging the aunty model; which calls for navigating the underlying systemic oppressions which might deter BIPOC children from getting access to health and social services. A noteworthy point here is that many unhoused youths we have encountered who use substances face discomforts related to racial aggressions or being written off as "unclean" when visiting the hospital, which in this case has called for innovative approaches such as getting into

²⁵ Damon Barrett, "The Child's Right to Protection from Drugs: Understanding History to Move Forward," *Health and Human Rights* 19, no. 1 (2017): 263–268

²⁶ See the infamous 100:1 sentencing disparity between crack cocaine (associated with black users) and powder cocaine (associated with white users) which led to a vast number of harsher penalties for Black individuals, increasing incarceration rates among BIPOC parents and leading to family ruptures and intergenerational harms.

²⁷ See *R v Gladue*, [1999] 1 S.C.R. 688, Supreme Court of Canada, decided December 19, 1999, and *R v Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, Supreme Court of Canada, decided February 24, 2012. However, despite these legal precedents, systematic punitive discrimination against BIPOC children who use drugs continues. These criminal justice responses perpetuate structural racism by disproportionately exposing BIPOC youth to harsh enforcement, over-policing, and incarceration, rather than culturally competent, trauma-informed treatment.

contact with the Aboriginal Health Wellness Mobile team. Further to this empirical evidence from interviews conducted by the Manitoba Advocate for Children and Youth (MACY) showcased that majority of the youth who struggled with substance use in Manitoba also had overlapping degrees of involvement with other systems such as the Child and Family Services (CFS), with many also detailing their prolonged involvement with or in the justice system where 23% of the youth spoken to had been or were currently incarcerated in connection with their substance use. This mirrors the collective experiences of individuals accessing Manitoba's Mobile Overdose Prevention Site (MOPS) showcase that using drugs is a form of self-medication to cope with trauma, grief, loneliness and stress. MOPS is heavily driven through the community with people who use drugs.

Consequently, a legally sound interpretation of Article 33 requires states to reject enforcement-focused strategies that uphold systemic injustices and move beyond the rhetoric of "drug use as symptom." States must instead address the systemic core causes of houselessness, trauma, colonialism, and bureaucratic obstacles in care systems by implementing comprehensive, rights-based policies that protect children's health, best interests, and dignity. By failing to do so, the very protections that Article 33 is seemingly intended for continue to be undermined and international human rights duties under the CRC violated.

The following section now critically examines harm reduction for children as a rights-compliant alternative within legal frameworks, examining its potential as a legally and ethically grounded response that upholds the rights of children affected by substance use and related punitive drug policies.

3.0 HARM REDUCTION: A RIGHTS-COMPLIANT ALTERNATIVE

3.1 HARM REDUCTION IN THE CONTEXT OF CHILDREN'S RIGHTS

As discussed in the prior sections, the absence of explicit reference to harm reduction practices in Article 33 renders the provision both ambiguous and susceptible to restrictive, if not perverse, interpretations contrary to its very object and purpose. To enumerate, pursuant to Article 24 of the CRC "State parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health

care services”.²⁸ A good faith interpretation in line with Article 31 of the VCLT demands consideration of the CRC as an integrated whole, where the rights to health and protection under Articles 24 and 20 respectively provide important interpretive context.

Harm reduction embodies principles of autonomy and justice for children, especially those who have been subjected to harms while navigating the child welfare system, health care system and involuntary treatment programs. While abstinence is idealized, experience from sexual health discourse shows that abstinence-only education has proven ineffective, leading instead to the adoption of harm reduction strategies focused on safer sex practices. Harm reduction principles thus remain cognizant of the mere fact that sustained abstinence may not be immediately attainable for all children. Not to mention that strategies to minimize harm; youth-friendly education on where to access information surrounding substances, preventative and inclusive mental health supports, supervised consumption, provision of naloxone, needle and syringe programs, safer use education, community that prioritizes relationship building and direct linkage to supportive resources reduces morbidity and mortality.

3.2 EVIDENCE-BASED HARM REDUCTION STRATEGIES FOR CHILDREN

“Twelve (30%) of the youth we spoke to shared that they did not feel they could access a safe supply of substances they used, while six (15%) believed they could because they either trusted their supplier or had means of testing their supply.”²⁹ The second criterion for a state's discretion in identifying suitable actions under Article 33 is the necessity for those measures to be effective. While it's crucial that youth encountering the justice system be provided with support for their substance use, the fact that some youth need to get to the point of being criminally charged to receive information about services is problematic.³⁰ Thus, when evaluating the potential efficacy of any proposed action such as harm reduction, states should rely on the current evidence base for specific interventions.

²⁸ United Nations, Convention on the Rights of the Child, November 20, 1989, Treaty Series, vol. 1577, p. 3, Articles 20, 24, 33, accessed August 24, 2025, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²⁹ Manitoba Advocate for Children and Youth. (2024). Innagakeya Bimadizewin: Unifying Voices for Youth Addiction System Change.

³⁰ Ibid, 24.

“I was like I need a hoot, or I need a thousand cigarettes to keep me happy. And they were like, “Well unfortunately, because weed is a substance, we cannot allow you to take it.” And I was just like, “What do you guys mean? Like it’s going to keep me calm and from acting out, and so you guys won’t, like, be threatening to like, kick me out or like, to put me somewhere else. “And it’s just like I need that other high. That safer high”.³¹

The focal point here is that alternative methods such as indigenous cultural medicine, community presence, involvement of kookums, sweat lodges and cannabis can facilitate withdrawal and recovery, one that respects the child’s agency and autonomy while meeting them where they are at. This is echoed by reports from UN Special Rapporteurs on the right to health and drug policies, framing harm reduction as conducting with prevailing international human rights principles and encouraging states to adopt pragmatic, evidence-based approaches informed by the lived realities of affected populations.³² Significantly, it is noted that one participant from the Manitoba Harm Reduction Network, emphasized that treatment programs neglected addressing the root causes of substance use, instead narrowly focusing on the “addiction problem”.³³ To enumerate, when this participant was “rescued” from his encampment as a youth and placed into a treatment centre for methamphetamine use, the imposition of restrictive policies that denied him access to essential coping mechanisms, such as cannabis or cigarettes, functioned effectively as punitive deterrents. These constraints ultimately contributed to his decision to return to living in his encampment, underscoring how rigid, non-person-centred approaches may undermine treatment outcomes and contravene principles of dignity and self-determination recognized in international human rights law frameworks.

Aligning with the above notion, is the myth that Supervised Consumption Sites (SCS) promote drug use among children, attract drug dealers, cause crime and undermine neighbourhoods. However, this myth is easily debunked as this overlooks the reality that informal or otherwise unofficial consumption sites already exist within every community. Correspondingly the opening of SCS would shift away this “dangerous” activity from public or informal sites and into approved

³¹ Ibid, 25.

³² Tlaleng Mofokeng, "Drug Use, Harm Reduction and the Right to Health," Report of the UN Special Rapporteur on the Right to Health, United Nations General Assembly, A/HRC/56/52, April 29, 2024, accessed August 24, 2025, <https://docs.un.org/en/A/HRC/56/52>.

³³ "Harm Reduction," Manitoba Harm Reduction Network, <https://mhrn.ca/harm-reduction>

formal sites with staff and peers who are trained on overdose prevention and can connect youth who happen to visit these sites to relevant youth-related resources if needed.

3.3 ALIGNMENT WITH CRC PRINCIPLES AND THE PROTECTION MANDATE

A. NON-DISCRIMINATION

Harm reduction in this analysis operationalizes in the context of the CRC principle of non-discrimination, through affirmative approaches that focus on the underlying roots of substance use among children, and is cognizant of cultural approaches, dismantling of or offering alternative forms to treatment that is voluntary and accessible regardless of the prevailing circumstances of the child. This calls for the Committee to issue a clear and objective General Comment on Article 33 that rejects punitive, criminalization-based approaches and affirms harm reduction for children, while integrating a structural analysis into its review process, giving due recognition to the compounded vulnerabilities faced by children at the intersection of race, class, poverty and punitive drug control.

B. BEST INTEREST OF THE CHILD

A key point of legal contention emerged during my practicum field placement at the Manitoba Harm Reduction Network (MHRN), where service providers reported encounters with several youth aged 12 years old directly seeking harm reduction supplies. The scenario exposing a profound legal dilemma; whether service providers in Manitoba have a duty to report considering that the provincial regulations only cover youth aged 13-17 in request of harm reduction supplies. Does this then place the said child at more risk given that it might not always be in a child's best interest to make a formal report or to get child protection services involved? Does it then provide service providers a degree of flexibility and autonomy on what to report? Or would this scenario automatically then fall to child protection laws, that heavily rely on punitive measures?

The Infants Act of British Columbia, that defines an infant as under 19 years of age, offers a sounding resolution to the aforementioned dilemma. This statutory provision eliminates arbitrary age thresholds for consent, instead mandating and entrusting healthcare and support workers with the expertise to assess a minor's capacity and treatment needs, which eliminates time constricting barriers and legal delays when seeking treatment or youth friendly resources.³⁴ This act works

³⁴ *Infants Act*, R.S.B.C. 1996, c. 223, § 17 (Canada), accessed August 3, 2025, https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96223_01.

tremendously as a great alternative framework for advancing the best interests of the child by fostering autonomy, protecting rights, and ensuring professional assessment and legal safeguards.

Pursuant to General Comment No.14 on the right of the child to have their best interests taken as a primary consideration, appropriateness must be assessed in light of necessity, proportionality, and effectiveness, a criteria that is all met by the inclusion of harm reduction interventions such as opioid substitution therapy, needle exchange programs, drug testing measures and STBBI testing.

The best interests of the child principle, enshrined in Article 3(1) of the CRC, mandates that “in all actions concerning children, the best interests of the child shall be a primary consideration”. Moreover, the best interest principle is inclusive of procedural safeguards: decisions affecting children must be timely, reasoned, and inclusive of the child’s views, thus safeguarding against arbitrary or culturally biased interpretations. Protective measures must prioritize the best interests as a primary consideration, meaning decisions must be child-centred, evidence-based, and rights-respecting rather than broadly restrictive.

Children’s rights are distinguished from those of adults due to their ongoing dependence on family and environmental factors throughout their development from birth to adulthood. As they are not yet fully autonomous, children require specialized protections and considerations in areas such as nutrition, healthcare, education, access to knowledge, religious practice, skill development, employment opportunities, personal security, and safeguarding from fear and distress.³⁵ Seemingly echoing views that hold children as pure beings that should primarily be regarded as victims requiring protection and rehabilitation rather than as mere offenders.

All in all, this form of harm reduction advocacy thus reframes the “best interest” by insisting that genuine protection necessitates not only safeguarding children from immediate physical risks but also addressing underlying vulnerabilities through welfare-oriented, non-adversarial legal frameworks. Such an approach resonates with evolving interpretations under international human rights bodies, calling for tailored protective measures grounded in a child’s holistic well-being rather than reductive criminal justice responses, thereby advancing a more nuanced and humane realization of children’s rights within international law.

³⁵ Sitti Khadijah Nur Fajri, "Legal Protection Of Children As A Drug Abuse Of Drugs," *IOSR Journal of Humanities and Social Science* 23, no. 3 (March 2018): 91-98, <https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue3/Version-9/L2303099198.pdf>.

C. RIGHT TO BE HEARD/RESPECT FOR THE VIEWS OF THE CHILD

While practical challenges exist surrounding paternalistic approaches that eradicate agency from the child and view them as “tragic victims of the drug scourge”, along with interventions that fail to respect their evolving capacities, the principled legal framework of the right to be heard aligns with harm reduction as a pragmatic approach that integrates protection with agency. It is imperative to highlight that Article 33 is governed by the broader duty outlined in Article 2, which requires states to “respect and ensure the rights outlined in this Convention to every child within their territory without discrimination”. The interpretation of this duty, as explained in the commentary on Article 2, is widely understood to require states to respect, protect, and fulfill a child's rights.³⁶ Furthermore, denying agency outright on the basis of a child’s psychological or social development, risks the exclusion of the child’s perspective, which is critical for decisions impacting their “best interests”. While it remains acknowledged that very young children might not have “full” decision-making capacity, their right to be heard should be respected and recognized within protective frameworks that call for appropriate measures.

The subsequent section sets out a comprehensive analysis on the tripartite obligations of states; the duties to respect, protect, and fulfill, arising under Article 33 of the Convention on the Rights of the Child (CRC), and reinterprets “appropriate measures” through a harm reduction lens, in accordance with international human rights law.

4.0 REINTERPRETING “APPROPRIATE MEASURES” THROUGH A HARM REDUCTION LENS

4.1 OBLIGATION TO RESPECT

The duty to respect obliges that states refrain from enacting actions or policies that directly or indirectly infringe on a child’s ability to realize their rights under the international human rights law framework. In the context of illicit drug use, this duty imposes stringent constraints on states resort to compulsory and involuntary drug treatment programs, not to mention the denial of access to basic health services on the basis of age, parental consent or social stigma. This normative notion is echoed by the Human Rights Committee’s General Comment No. 36 on the Right to Life, which

³⁶ Damon Barrett and John Tobin, "Article 33: Protection from Narcotic Drugs and Psychotropic Substances," *University of Melbourne Law School Research Series*, (2016), <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/UMelbLRS/2016/7.html>.

affirms that health-oriented, rather than punitive, responses to drug-related issues align with the obligations under the International Covenant on Civil and Political Rights (ICCPR).

This obligation necessitates negative restraint, however beyond mere restraint this obliges states to refrain from spatial tactics to provoke moral panics surrounding children and drugs. To enumerate, actions by governments as state actors such as exploiting buffer zone laws through siting schools and playgrounds in proposed locations of supervised consumption sites (SCS), results in a defacto form of discrimination and exclusionary politics that restrict-life saving interventions.

4.2 OBLIGATION TO PROTECT

The duty to protect requires states to take positive measures to shield children from third party harm. This necessitates balancing protective intent with actual effects on community health; too rigorous or strategically manipulative employment of protective measures may result in counterproductive outcomes that worsen drug-related harms and marginalization, particularly among at-risk children.

Of even greater jurisprudential weight is discriminatory policing, forced removals and denial of culturally relevant services. This obligation demands the involvement of collecting and utilizing disaggregated data to identify intersectional vulnerabilities, particularly among BIPOC children, so that interventions are culturally sensitive, non-discriminatory, and health-oriented, consistent with the best interest principle under Article 3 of the CRC.

Of equal importance and perhaps warranting further examination is the issue of access for disabled children who use substances to harm reduction services. These barriers including physical inaccessibility, stigmatization, lack of tailored information, and inadequate cultural responsiveness, as well as the lack of services tailored to support youth with intellectual disabilities, FASD, ADHD and social anxieties. The Convention on the Rights of the Child (CRC), alongside the Convention on the Rights of Persons with Disabilities (CRPD), together mandate that states adopt positive measures guaranteeing disabled children safe and confidential access to

harm reduction, treatment, and rehabilitative services designed to accommodate their physical, mental, and developmental needs.³⁷

4.3 OBLIGATION TO FULFILL

States are obliged to take affirmative steps to realize the full enjoyment of child's rights through creating an effective enabling environment for the prevention of drug use by children and the reduction of any health and social harms associated with drug use, establishing child-sensitive and voluntary evidence-based harm reduction services. Outreach services must be peer-based, involve PWUD's and in turn state actors must invest budgetary, legislative and judicial measures to institutionalize these services.

This legal obligation also necessitates the removal bureaucratic barriers within mental health systems, social and educational supports, as well as housing. Moreover, this requires that such essential services be accessible, voluntary, and based on informed consent, firmly rejecting coercive or involuntary measures except where strictly necessary under clear legal safeguards consistent with international human rights standards.

5.0 CONCLUSION AND RECOMMENDATIONS

In conclusion, the central legal obligation imposed by Article 33 of the Convention on the Rights of the Child is not satisfied by punitive or prohibitionist drug policies that have repeatedly failed to protect and continue to actively harm children, particularly those children facing compounded forms of marginalizations and systemic oppressions. Rather, the interpretive mandate for states is clear; the protection envisioned by Article 33 must be taken in conjunction with the CRC's core principles of non-discrimination, the right to health and the best interests of the child. A mandate that ostensibly aligns with states as duty-bearers with the obligation to encompass evidence-based harm reduction measures that are tailored to the lived realities of all children. This necessitates moving away from the constructive ambiguity that is ingrained within Article 33 to an explicit overarching General Comment from the Committee on the Rights of the Child on state obligations under the Convention.

³⁷ United Nations General Assembly, *Convention on the Rights of the Child*, A/RES/44/25, November 20, 1989, art. 23; United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, A/RES/61/106, December 13, 2006.

The historical record remains unequivocal; international law has long been grounded on illicit drugs as an existential “threat” as opposed to a public health or social policy issue that takes into consideration the glaring privilege of race, gender and class in escaping the drug war. While these concerns are acknowledged in various international declarations, they remain as they are – token recognitions in actual responses which are overshadowed by law enforcement-responses. Responses perpetuated by the prevailing rhetoric of children as an extension of parental authority and one that reproduces contexts where drug-related harms can occur, as well as frames substance use as an existential threat rather than providing a framework that acknowledges the social determinants of substance use.

Given the current legal and political climate, it is hardly surprising that executive orders criminalizing homelessness, such as the most recent “Ending Crime and Disorder on America’s Streets” order by the Trump administration, persist, reflecting a troubling continuation of policies by state actors that prioritize punitive measures over constitutional protections and evidence-based, rights-affirming solutions. Rather than addressing root causes, it targets housing-first policies, racialized groups, expands law enforcement powers, mandates institutionalization, and defunds vital harm reduction programs, actions that risk violating human rights to dignity, due process, and health.

In direct contrast, at its very core, the principle of harm reduction is grounded in compassion, asking the question of “who” in addition to the “what”, meeting people where they are at and ensuring that legal and policy responses are attuned to the varying lived realities of those who use substances. This is not a matter of political expediency relating to whether drug laws or policies should be reformed, but rather one that compels states to question how laws should be reformed if children are at the forefront; humanize the matter at hand and move beyond abstract debates to confronting the stark reality of punitive drug laws on children. From holistic approaches that value supervised consumption sites, peer guidance from PWUDs, housing first principles, cultural indigenous supports such as grief, sharing, sweat lodges and healing circles to eliminating bureaucratic impediments to mental health services, offering teens who identify as trans information on how to access hormones, how sex can be safer and risk-aware, how to practice harm reduction with drugs and self-injury, how to hold onto who they are while being abused by families, the healthcare and child-welfare system. These forms of aid continue to be held as controversial, however the mere fact that they do keep people alive, remains indisputable.

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