

# Submission to OHCHR for the preparation of the 2023 report of the United Nations High Commissioner for Human Rights, pursuant to Human Rights Council resolution 47/21

3 April 2023

## Reporting 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. is a leading NGO dedicated to reducing the negative health, social, and legal impacts of drug use and drug policy.

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

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## Introduction

Harm Reduction International (HRI) welcomes the opportunity to provide input to OHCHR for the preparation of the 2023 report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 47/21. This submission focuses on drug control laws, policies and practices, their disproportionate enforcement against people of African descent, and recent reforms to drug law enforcement policies and practices with the potential to positively contribute to achieving racial justice and equality.

### **Systemic racism and violations of international human rights law against Africans and people of African descent by drug law enforcement agencies**

Systemic racism against people of African descent in the context of drug law enforcement is well documented, including by UN human rights mechanisms and in previous civil society submissions to OHCHR and its bodies. The following paragraphs recall some examples and key references that can be useful in drafting the 2023 report.

Most relevant to this end, the 2021 High Commissioner report on “the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers” identified the ‘war on drugs’ as a key context in which police-related fatalities occur; and noted disproportionate stops, arrests, incarceration, and sentencing that people of African descent are exposed to for drug-related crimes.<sup>1</sup> The connected conference room paper<sup>2</sup> delved further into the role of drug law enforcement in perpetuating racism, by highlighting the many ways in which people of African descent are disproportionately impacted by punitive drug policies (up to extrajudicial killings in drug policing operations and the imposition of the death penalty for drug offences), and denouncing the role of drug control in the militarisation of law enforcement in many countries. All three main contexts identified where most police-related fatalities occur - policing of minor offences, law enforcement as first responders in mental health crises, and special police operations – are typical circumstances in which drug laws are implemented. The follow-up report, presented at the 51<sup>st</sup> session of the Human Rights Council, reiterated evidence of racial disparities in drug policing.<sup>3</sup>

Other UN human rights bodies have recently denounced this phenomenon. Among many others, the UN Working Group on Arbitrary Detention recently noted the discriminatory enforcement of drug laws against minorities, including people of African descent.<sup>4</sup> In 2019, the Working Group of Experts on People of African Descent concluded that “the war on drugs has operated more effectively as a system of racial control than as a mechanism for combating the use and trafficking of narcotics. [...it] has disproportionately targeted people of African descent and disregarded the massive costs to the dignity, humanity and freedom of individuals.”<sup>5</sup> Earlier in 2016, the same Working Group had denounced the “devastating impacts” of the ‘war on drugs’ on mass incarceration in the US.<sup>6</sup> Similarly in 2016, the

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<sup>1</sup> A/HRC/47/53

<sup>2</sup> A/HRC/47/CRP.1

<sup>3</sup> A/HRC/51/53

<sup>4</sup> A/HRC/47/40

<sup>5</sup> OHCHR (14 March, 2019), [‘Fight against world drug problem must address unjust impact on people of African descent, say UN rights experts’](#) [web article, accessed February 2022].

<sup>6</sup> A/HRC/33/61/ADD.2

Special Rapporteur on minority issues expressed concerns for the role of punitive drug control in Brazil in the rise of incarceration rates of Afro-Brazilians, urging the country to review such policies.<sup>7</sup>

At the intergovernmental level, the latest UN General Assembly resolution on ‘Addressing and countering the world drug problem through a comprehensive, integrated and balanced approach’, adopted on 15 December 2022, condemned “any discriminatory or violent practice perpetrated by law enforcement officials against persons who are vulnerable or marginalized, including systemic racism in the law enforcement and criminal justice systems.”<sup>8</sup>

Manifestations of systemic racism as well as policies and practices in violation of international human rights law against Africans and people of African descent by drug law enforcement agencies are many, and emerging from different countries. These include (while not being limited to): racial profiling and disproportionate policing of Black and Brown communities in the context of or under the guise of drug law enforcement; disproportionate use of drug-related stop-and-search, arrest, prosecution, and incarceration; imposition of harsher sentences for drug-related crimes (up to the death penalty); excessive use of force against people of African descent in the implementation of drug control laws, sometimes with fatal outcomes consequences. The consequences of this phenomenon on the health and rights of disproportionately affected communities are many, and span from incarceration, to poorer health, to denial of voting rights and/or access to social services. A full reconstruction of the disproportionate impacts of drug laws and policies on people of African descent is hampered by lack of, or failure/refusal to release, official, updated, and disaggregated data on drug law enforcement and race and ethnicity in many countries.

To avoid duplication, for further details and examples we invite the Office to refer back to civil society submissions for earlier iterations of this report, and to other UN human rights mechanisms, such as:

- Input submitted ahead of the 2021 report<sup>9</sup> by American Civil Liberties Union;<sup>10</sup> Harm Reduction International and Release;<sup>11</sup> HIV Legal Network and Centre for Drug Policy Evaluation;<sup>12</sup>
- Input submitted ahead of the 2022 report<sup>13</sup> by Centre for Drug Policy Evaluation and HIV Legal Network;<sup>14</sup> Conectas (joint submission);<sup>15</sup> Harm Reduction International and Release.<sup>16</sup>
- Input by the Drug Policy Alliance to the International Independent Expert Mechanism to Advance Racial Justice and Equality in the context of Law Enforcement ahead of its country visit to the United States of America, submitted on 21 February 2023 (not publicly available).

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<sup>7</sup> A/HRC/31/56/ADD.1

<sup>8</sup> A/RES/77/238

<sup>9</sup> All available at this link: <https://www.ohchr.org/en/calls-for-input/2020/promotion-and-protection-human-rights-and-fundamental-freedoms-africans-and>

<sup>10</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES\\_43\\_1/NGOsAndOthers/american-civil-liberties-union.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/american-civil-liberties-union.pdf)

<sup>11</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES\\_43\\_1/NGOsAndOthers/harm-reduction-international-and-release.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/harm-reduction-international-and-release.pdf)

<sup>12</sup> [https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES\\_43\\_1/NGOsAndOthers/hiv-legal-network-and-the-centre-on-drug-policy-evaluation.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/RES_43_1/NGOsAndOthers/hiv-legal-network-and-the-centre-on-drug-policy-evaluation.pdf)

<sup>13</sup> All available at this link: <https://www.ohchr.org/en/calls-for-input/2022/report-united-nations-high-commissioner-human-rights-pursuant-human-rights>

<sup>14</sup> <https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/cfi-res-47-21/submissions/2022-09-14/Centre-on-Drug-Policy-Evaluation-and-the-HIV-Legal-Network-Submission-NGO-PAD-hrc51-A-HRC-51-53.pdf>

<sup>15</sup> <https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/cfi-res-47-21/submissions/2022-09-14/Conectas-et-al-Submission-NGO-PAD-hrc51-A-HRC-51-53.pdf>

<sup>16</sup> <https://www.ohchr.org/sites/default/files/documents/issues/racism/wgeapd/cfi-res-47-21/submissions/2022-09-14/Harm-Reduction-International-and-Release-Submission-NGO-PAD-hrc51-A-HRC-51-53.pdf>

## Further action taken globally towards transformative change for racial justice and equality

The abovementioned UN resources and civil society inputs identify many priority actions for States to address and redress systemic racism in the context of drug law enforcement, including (while not limited to):

- Comprehensive reform of “drug-related policies, laws and practices with discriminatory outcomes, in line with international human rights standards.”<sup>17</sup> Specifically, the decriminalisation of drugs is recommended, ideally followed by legal regulation in such a way as to (a) provide reparations for historically affected communities; and (b) promote just, fair, and equitable drug markets. Full decriminalisation should be understood as defined by the International Network of People who Use Drugs (INPUD), meaning “the removal of all administrative sanctions and mechanisms of monitoring, surveillance, coercion and punishment for use and possession of drugs; removing the use of arbitrary quantity thresholds or threshold amounts that result in criminal records; ensuring that operational police fully understand policy and legislative changes associated with full decriminalization; and establishing independent and ongoing monitoring for criminal justice systems”;<sup>18</sup>
- Redirecting funding from drug law enforcement and institutions that uphold racist, discriminatory policies and towards a health- and human rights-based approach centred around harm reduction, social services, and community empowerment;<sup>19</sup>
- Reverting the militarisation of drug law enforcement where it has manifested (in countries such as the USA and Brazil), including by prohibiting the use of military equipment and tactics and special operations;
- Prohibiting all forms of racial profiling by law enforcement, and investigating and holding accountable officers who engage in this practice and ensuring investigations and discipline for racial bias;
- Collecting and publishing official, comprehensive, updated data on interaction with drug law enforcement disaggregated by age, gender, race and ethnicity;
- In line with the essential principles of ‘nothing about us without us’, and with the right to participation in public affairs recognised by international human rights law and standards, ensuring all reforms and interventions are developed, implemented, and monitored with the full and meaningful engagement of affected communities, including people who use drugs and people of African descent.

Regrettably, most of these recommendations have not found application in practice yet, and drug control policies remain overwhelmingly punitive and racist. Nevertheless, some recent positive developments can be identified, a selection of which will be introduced in the following paragraphs.

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<sup>17</sup> A/HRC/47/53, para 42. This call reiterates the position of several UN entities, including including OHCHR, the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Program (UNDP), the UN Special Rapporteur on the right to health, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, the Committee on Economic, Social and Cultural Rights; and reflected in the 2018 UN system common position ‘on drug policies’, available at <https://unsceb.org/united-nations-system-common-position-supporting-implementation-international-drug-control-policy>.

<sup>18</sup> <https://inpud.net/drug-decriminalisation-progress-or-political-red-herring/>

<sup>19</sup> For more on funding see Harm Reduction International (2018), ‘The lost decade: Neglect for harm reduction funding and the health crisis among people who use drugs’; Harm Reduction International (2021), ‘Failure to Fund: The Continued Crisis For Harm Reduction Funding In Low- And Middle-Income Countries’

### Community- and civil society-led data collection and publication

The lack of publicly available data and analysis on the impact of drug law enforcement on fundamental rights has promoted the creation of civil society-led monitoring and reporting tools. For example, in 2021, a consortium of civil society, community organisations, and academia launched the Global Drug Policy Index,<sup>20</sup> an alternative data-collection and evaluation tool which offers the first-ever global analysis of drug policies and their implementation. The Index diverges from outdated and harmful drug policy measurements focusing on achieving a ‘drug-free society’ by integrating a broad set of indicators to measure the success of drug policies against health, human rights and development outcomes.

### Promotion of alternative responses to minor offences and drug-related health incidents

The compounded effect of the COVID-19 pandemic and worldwide protests against systemic racism - featuring consistent calls for drug policy reform, divestment, and redirection and led by affected communities - have nudged the adoption, in some countries, of alternative approaches. For example, in the US, several cities have adopted measures to reduce the role of law enforcement as first responders for health and social issues or minor infractions, including those assessed as drug-related.

A review by the Brennan Centre for Justice reveals that between January 2020 and July 2022, at least 15 US jurisdictions introduced ‘co-responder’ programs, with law enforcement paired up with unarmed community responders, such as paramedics or mental health professionals.<sup>21</sup> Nineteen more jurisdictions adopted ‘alternative first responder’ programs, with health and social professionals dispatched instead of law enforcement.<sup>22</sup> This includes the city of Denver (Colorado, US), which in 2020 introduced a program whereby emergency calls related to mental health, homelessness and substance use would be managed by health professionals instead of the police. The programme was highly successful in responding to emergencies while minimising contact with law enforcement, leading to its renewal and expansion in 2022.<sup>23</sup> Community organisations played, and continue playing, an active role in introducing and monitoring the program.<sup>24</sup> Another example is that of the Atlanta Police Alternatives & Diversion Initiative (PAD), reportedly “born out of the work and vision of Atlantans directly impacted by policing and incarceration” and “under the leadership of queer and trans people of color.”<sup>25</sup> PAD responds to community and law enforcement referrals related to mental health, extreme poverty, or drug use or dependence, with interventions rooted in a harm reduction and housing first approach (including linking individuals to services).<sup>26</sup>

These developments are particularly significant, as the routine use of police to respond to overdose, health crises, and perceived “nuisance” matters has contributed significantly to excessive police budgets and far too many incidents involving the unnecessary use of force by police.

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<sup>20</sup> <https://globaldrugpolicyindex.net/>

<sup>21</sup> <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed>

<sup>22</sup> <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed>

<sup>23</sup> <https://www.denverpost.com/2022/02/20/denver-star-program-expansion/>

<sup>24</sup> *Ibid.* Also <https://www.denverpost.com/2022/02/20/denver-star-program-expansion/>.

<sup>25</sup> <https://www.atlantapad.org/who-we-are#history>

<sup>26</sup> <https://www.atlantapad.org/harm-reduction>

### Decriminalisation of drugs

Despite a predominantly punitive approach to drugs globally, in recent years several jurisdictions have decriminalised the use and possession of substances, often with leadership from directly impacted communities and with significant impacts on interactions of communities of African descent with law enforcement. A recent study found that the legalisation of cannabis use in Colorado and Washington (US) led to a significant fall in the proportion of traffic stops resulting in either a drug-related infraction or a misdemeanour; and that “since black drivers were more likely to be charged with such offences previous to legalization, these drivers were also disproportionately impacted by the policy change.”<sup>27</sup> Similarly, “after the legalization of [cannabis] the number of searches fell substantially in Colorado and Washington, ostensibly because the policy change removed a common reason for conducting searches. Because black and Hispanic drivers were more likely to be searched before legalization, the policy change reduced the absolute gap in search rates between race groups,”<sup>28</sup> though it did not eliminate it.

As mentioned, decriminalisation and legalisation measures are not sufficient to address systemic racism in drug law enforcement. They must be designed and implemented with the full participation of affected communities, be comprehensive, and aimed at achieving social justice and repairing past wrongs. For example, the NGO Release reports how the failure to decriminalise the use of cannabis *in public spaces* limited the transformative potential of reforms, and their positive impact on over-policed communities:

“In November 2012, Colorado legalised cannabis for recreational use among adults aged 21 years and older with the passing of Amendment 64 - with the first retail sales occurring in 2014. Whilst the arrest rate for cannabis-related offences for White youths aged 10 to 17 fell between 2012 and 2014 by 9%, arrests for Black youths over the same time period rose by 52%, and rose by 22% for Hispanic youths. Another concern was the observed rise in racial disparities for the charge of public cannabis consumption, particularly in Denver, Colorado, post-legalisation. Disparities in public cannabis consumption arrests are also seen in other jurisdictions, for example, in 2016 in Washington D.C, a year following the legalisation of cannabis for recreational use, Black people were 11 times more likely than a White person to be arrested for public consumption of cannabis, despite the fact that Black residents made up approximately 49% of Washington D.C.’s population, and used cannabis at similar rates to White residents.”<sup>29</sup>

For a detailed review of the characteristics of just, fair, and equitable drug markets, see the ‘Cannabis social equity principles’ recently published in the UK.<sup>30</sup> These include the promotion of “schemes [...] to actively support people who have been criminalised for cannabis-related activities, and people from communities that have been over-policed and over-criminalised as a result of cannabis-focused law enforcement, into the legal industry” – such as, in many countries, people of African descent. An example is that of the ‘Social Equity Programme’ introduced in Massachusetts, which “aims to support people of Black, African American, Hispanic, or Latino descent in the cannabis industry through mentorship, employee training and start-up business grants. Those eligible for the programme but who do not wish to apply for a licence to open a business can ‘instead receive training for management and entry-level positions in the industry’. The Massachusetts model [...]recognises that the cannabis

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<sup>27</sup> <https://www.nature.com/articles/s41562-020-0858-1>

<sup>28</sup> *Ibid.*

<sup>29</sup> [https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform\\_Release.pdf](https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform_Release.pdf)

<sup>30</sup> [https://www.release.org.uk/sites/default/files/pdf/publications/14-Social-Equity-Principles-UK-Cannabis-Reform\\_Release.pdf](https://www.release.org.uk/sites/default/files/pdf/publications/14-Social-Equity-Principles-UK-Cannabis-Reform_Release.pdf)

industry is not only about selling and growing but also includes a range of employment opportunities in complementary industries. For example, the state's Cannabis Control Board recently permitted home delivery sales, with licences to deliver being initially restricted to participants of the social equity programme.<sup>31</sup>

## Recommendations

Based on the evidence presented or recalled in this submission, we urge OHCHR to reiterate, in the upcoming report, concern for the role of drug law enforcement in perpetuating systemic racism against Africans and people of African Descent; and in enabling human rights violations against this group. Accordingly, we invite the Office to recommend the following:

- Reforming drug-related policies, laws and practices with discriminatory outcomes, in line with international human rights law and standards and with an eye to full decriminalisation of people who use drugs and/or people of African descent. Similarly, reform laws and policies commonly misused for – or whose application has the effect of - disproportionately targeting people who use drugs, such as those criminalised petty offences;
- Redirecting funding from drug law enforcement towards health- and human rights-centred responses to drug use and other drug-related activities;
- Introducing and adequately funding community-based, trauma-informed first response programs, with trained staff to address acute behavioral health issues and other social matters. First response teams should be built around the principle of fully removing law enforcement from the response to calls for service. To this end, programs should have the following characteristics:
  - Responses to emergency calls for mental health and substance abuse crisis should be diverted to a crisis response team composed of mental health experts, including crisis-trained social workers. A separate emergency phone number that connects directly to the crisis response team, staffed by mental health experts should be available. Response team members should be equipped with and trained on the use of naloxone (an opioid overdose reversal drug);
  - Jurisdictions should establish policies to prevent the dispatch of police officers in tandem with civilian responders, except in the circumstances involving a clear and imminent danger of harm to persons present at the location;
  - Community based response teams should work to prevent a crisis before it occurs and engage with vulnerable populations to provide referrals for voluntary, preventive care; and
  - Response teams should be developed and managed by community-led entities, independent of law enforcement, and in cooperation with agencies responsible for health and social services.
- Prohibiting all forms of racial profiling by law enforcement, and investigating and holding accountable officers who engage in this practice and ensuring investigations and discipline for racial bias; and
- Ensuring all drug-related reforms and interventions – including the collection of disaggregated data - are developed, implemented, and monitored with the full and meaningful engagement of affected communities, including people who use drugs and people of African descent.

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<sup>31</sup> [https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform\\_Release.pdf](https://www.release.org.uk/sites/default/files/pdf/publications/Regulating-Right-Repairing-Wrongs-UK-Cannabis-Reform_Release.pdf)