

Submission to OHCHR on “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”, pursuant to Human Rights Council Resolution 43/1

4 December 2020



**Harm Reduction International (HRI)** is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.



**Release** is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws.

The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach.

Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality.

**HRI** and **Release** are both NGOs in Special Consultative Status with the Economic and Social Council of the United Nations.

## Introduction

Around the world, drug law enforcement disproportionately targets people of African descent, with heightened negative social, economic, health, and legal impacts. Research on different countries consistently shows that Black people are systematically discriminated against in all stages of the criminal justice process, being disproportionately policed, arrested, harshly sentenced, and incarcerated for drug offences. This has distinct repercussions not only on their liberty, but also on their health, and on the health and safety of their communities. The disparity is such that drug policy has been described as a “key mechanism for racial and social control within society”.<sup>1</sup> Far from being unintended consequences, drug control is in fact being employed “to justify excessive surveillance, criminalisation and the targeting of people of African descent worldwide.”<sup>2</sup>

That drug control works to criminalise and dehumanise certain individuals more than others also emerged in the case of George Floyd, where the presence of ‘potential intoxicants in his system’ was reported as a potential reason for his death, in an attempt to deflect from the responsibilities of police officers who ended Mr. Floyd’s life.<sup>3</sup>

In March 2019, the UN Working Group of Experts on People of African Descent stated that:

“Enduring and entrenched racial disparities in the criminal justice system – as well as ongoing tolerance of race-based outcomes in policing, entrenched racial disparities, and ongoing selective enforcement of the law – reflect harmful stereotypes grounded in the historical legacies of the global trafficking in enslaved Africans, colonisation, and the ways in which modern social narratives evolved from rhetoric designed to justify these institutions and the exploitation of people of African descent.”

Similarly, in its 2015 study on the impact of the world drug problem on the enjoyment of human rights, the UN High Commissioner for Human Rights has acknowledged that ethnic minorities “may be particularly subject to discrimination in the context of drug enforcement efforts.”<sup>4</sup>

This report focuses on racism and discrimination against people of African descent in drug law enforcement. A detailed reconstruction and in-depth analysis of the racial undertones of drug control laws, their enforcement, and their impacts on people of African descent around the world goes well beyond the scope and space of this report. As such, this submission merely provides some (among many) examples from the USA, the United Kingdom, South Africa, and Brazil, on policing, arrest, sentencing and incarceration of people of African descent for drug offences; and comments on some social and health impacts of this phenomenon, whilst referring to more detailed sources.<sup>5</sup>

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<sup>1</sup> Imani Robinson, ‘Towards and Abolitionist Drug Policy Reform’, in Buxton J., Margo, G. and Burger, L. (ed.), *The Impact of Global Drug Policy on Women*, Emerald Publishing Limited (2020), 261. For an in-depth analysis on the USA, see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press (2010).

<sup>2</sup> OHCHR, ‘Fight against world drug problem must address unjust impact on people of African descent, say UN experts’ (Geneva, 14 March 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>.

<sup>3</sup> Al Jazeera, ‘Floyd family seeks independent autopsy on police brutality victim’, *Al Jazeera* (31 May 2020), <https://www.aljazeera.com/news/2020/05/31/floyd-family-seeks-independent-autopsy-on-police-brutality-victim/>.

<sup>4</sup> Human Rights Council, ‘Study on the impact of the world drug problem on the enjoyment of human rights – Report of the UN High Commissioner for Human Rights’, UN Doc. A/HRC/30/65 (4 September 2015), para. 51. See also submissions by the Global Commission on Drug Policy and Harm Reduction International and Penal Reform International for the drafting of the report.

<sup>5</sup> Among many others, for an in-depth and authoritative reconstruction of the structurally racist nature of drug control and drug law enforcement, see: Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Carl Hart, *High Price: A Neuroscientist’s Journey to Self-Discovery that Challenges Everything You Know About Drugs and Society*, Harper (2013); Kojo Koram (ed.), *The War on Drugs and the Global Colour Line*, Pluto Press (2019).

## 1. Policing and arrest of people of African descent for drug offences

Since a global ‘war on drugs’ was launched in the 1970s, evidence has emerged of its disproportionate impact on poor and marginalised communities, and of its predominant enforcement along racial lines.

### 1.1. USA

One of the countries where such racial disparity is more evident is the United States of America, where drug control is understood as the new system of racial control.<sup>6</sup> The escalation of punitive drug control in the 1970s and 1980s translated into increased, pervasive surveillance and policing of African-American communities, despite similar rates of drug use between the white and the Black population.<sup>7</sup> Black individuals and predominantly Black communities are disproportionately targeted by drug law enforcement; as an example, of the five million New Yorkers who were subject to stop and search - a key drug law enforcement tactic - between 2002 and 2014, just 9–12% were “Non-Hispanic White”, although approximately a third of New Yorkers were “non-Hispanic White” in 2010.<sup>8</sup> Also problematic is the widespread employment of SWAT teams – heavily armed law enforcement personnel – for conducting drug-related operations. Despite there being limited official reports on the details of such operations,<sup>9</sup> analysis conducted by ACLU found that the roughly 500 drug-related SWAT searches conducted in 2011-2012 resulted in seven deaths, and 46 injuries; while 65% of those operations resulted in no drugs being found.<sup>10</sup> Of these operations, 42% impacted Black persons; and notably, of all deployments that impacted Black persons 68% were for drug searches (against 38% of those impacting white people).<sup>11</sup> Among the most well-known cases is that of Breonna Taylor, a 26-year old Black woman who was shot and killed during a SWAT operation in execution of a drug warrant against her partner, in March 2020. No drugs were found in her apartment.<sup>12</sup>

As a direct consequence of this disproportionate targeting, African Americans are around three times more likely to be arrested for drug possession than their white counterparts.<sup>13</sup>

### 1.2. Brazil

Similarly in Brazil, drug control has been identified as a mechanism that perpetuates racial inequality, by targeting people of African descent and exacerbating racial discrimination. As a result, people of African descent are discriminated against at every stage of the criminal proceeding.<sup>14</sup>

In a country with a stark racial divide between predominantly white police and judges on one side, and predominantly Black drug defendants on the other, law enforcement enjoys significant, and over-broad, discretion to stop, search, and arrest people ‘suspected’ of drug involvement; translating in the

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<sup>6</sup> Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

<sup>7</sup> Among others, see: Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Jelani Kerr and Trinidad Jackson, ‘Stigma, Sexual Risks, and the war on drugs: Examining drug policy and HIV/AIDS Inequities among African Americans using the Drug War HIV/AIDS Inequities Model’, *International Journal of Drug Policy* 37 (2016), 33; Hannah LF Cooper, ‘War on Drugs Policing and Police Brutality’, *Substance Use & Misuse* 50 (2015).

<sup>8</sup> Cooper, ‘War on Drugs Policing and Police Brutality’.

<sup>9</sup> Rebecca Fielding-Miller et al., ‘The Interaction of Race and Gender as a Significant Driver of Racial Arrest Disparities for African American Men’, *Journal of Urban Health* (2018), doi:10.1007/s11524-018-00325-1.

<sup>10</sup> Cooper, ‘War on Drugs Policing and Police Brutality’.

<sup>11</sup> American Civil Liberties Union (ACLU), ‘War Comes Home: The Excessive Militarization of American Policing’ (New York: ACLU, 2014), 6. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>

<sup>12</sup> Richard A. Oppel Jr. et al., ‘What to know about Breonna Taylor’s death’, *The New York Times* (30 October 2020), <https://www.nytimes.com/article/breonna-taylor-police.html?auth=login-google>.

<sup>13</sup> Kerr and Jackson, ‘Stigma, Sexual Risks, and the war on drugs: Examining drug policy and HIV/AIDS Inequities among African Americans using the Drug War HIV/AIDS Inequities Model’, 33; Fielding-Miller et al., ‘The Interaction of Race and Gender as a Significant Driver of Racial Arrest Disparities for African American Men’; Ojmarrh Mitchell and Michael S. Caudy, ‘Race Differences in Drug Offending and Drug Distribution Arrests’, *Crime & Delinquency* (2015), <https://journals.sagepub.com/doi/abs/10.1177/0011128714568427>.

<sup>14</sup> Evandro Piza Duarte and Felipe da Silva Freitas, ‘Racism and Drug Policy: criminal control and the management of Black bodies by the Brazilian state’, in Koram (ed.), *The War on Drugs and the Global Colour Line*; Nathalia Oliveira and Eduardo Ribeiro, ‘The Massacre of Black Brazilians in the War on Drugs’, *International Journal on Human Rights Sur* 28 (2018), <https://sur.conectas.org/en/the-massacre-of-black-brazilians-in-the-war-on-drugs/>.

racial profiling and targeting of Black persons.<sup>15</sup> Perhaps more striking are the figures on deaths resulting from confrontations with police. While around 50% of Brazilians identify as Afro-descendants,<sup>16</sup> according to Piza Duarte and Da Silva Freitas “in 2017, an average of 14 people were killed per day in police interventions, more than 70 per cent of whom were Black, young, and male; these were in police operations mainly organized under the pretext of combating drug trafficking and focused in the peripheral communities of Black and poor people.”<sup>17</sup>

### 1.3. South Africa

A similar trend has been recorded in South Africa, where drug policy is effectively a continuation of the systematic violence, discrimination and segregation of the Apartheid era.<sup>18</sup>

As in most countries, law enforcement actors are at the forefront of implementing drug policy in the country, operating with a high degree of power and discretion, and often resorting to mass raids or widespread stop-and-search campaigns that disproportionately target predominantly Black communities.<sup>19</sup> As a result, in Western Cape ‘coloured’ citizens are 2.48 times more likely to be arrested on suspicion of drug possession or dealing than other racial groups.<sup>20</sup>

### 1.4. United Kingdom

In the UK, drug law enforcement, and the prioritisation of low-level drug offences by the police, are a key factor in the overrepresentation of black and brown persons in the criminal justice system. The disproportionate targeting of Black individuals and communities by drug law enforcement clearly emerges by the analysis of how stop and search is employed in the country.

In 2015, the Human Rights Committee noted that stop and search powers in the United Kingdom are exercised in an arbitrary and discriminatory manner, and recommended that the authorities establish “robust independent security and oversight” over them. Similarly, the Committee on Elimination of Racial Discrimination (CERD) has expressed concerns that the use of stop and search powers in the United Kingdom have a disproportionate impact on persons belonging to ethnic minorities, especially young men.<sup>21</sup>

Systemic racial discrimination in the use of police powers is well-evidenced, with Home Office data showing that black people in England and Wales are up to 40 times more likely than white people to be stopped and searched.<sup>22</sup> Drug law enforcement drives this trend: around 60% of all searches in England and Wales are carried out for drugs,<sup>23</sup> and black people are nine times more likely to be

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<sup>15</sup> Oliveira and Eduardo Ribeiro, ‘The Massacre of Black Brazilians in the War on Drugs’, *International Journal on Human Rights Sur* 28 (2018).

<sup>16</sup> <https://minorityrights.org/minorities/afro-brazilians/>

<sup>17</sup> Piza Duarte and Da Silva Freitas, ‘Racism and Drug Policy: criminal control and the management of Black bodies by the Brazilian state’, 85. For more on extrajudicial killings in context of law enforcement in Brazil, see <https://www.amnesty.org/download/Documents/AMR1920682015ENGLISH.PDF>

<sup>18</sup> For a reconstruction of the linkages between the apartheid regime and the ‘war on drugs’ in South Africa see Shaun Shelly, ‘Perpetuating Apartheid: South African Drug Policy’, in Koram (ed.), *The War on Drugs and the Global Colour Line*.

<sup>19</sup> “Race has become the marker of suspicion, justified teleologically by an implicit hierarchy in which colour and deviance are intimately interwoven, the result of which is that the policing of drugs continues the logic and effects of apartheid by other means.” Shelly, ‘Perpetuating Apartheid: South African Drug Policy’.

<sup>20</sup> *Ibid.*, 169.

<sup>21</sup> Committee on Elimination of Racial Discrimination, ‘Concluding Observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland’, UN Doc. CERD/C/GBR/CO/21-23 (3 October 2016), para. 22-23.

<sup>22</sup> Mark Townsend, ‘Black people ‘40 times more likely’ to be stopped and searched in UK’, *The Guardian* (4 May 2019), <https://www.theguardian.com/law/2019/may/04/stop-and-search-new-row-racial-bias>.

<sup>23</sup> Home Office (2019) [Police powers and procedures, England and Wales year ending 31 March 2019](#), stop and search statistics data tables: police powers and procedures year ending 31 March 2019.

stopped and searched for drugs despite being less likely to use controlled substances compared to the white population.<sup>24</sup>

Although recorded stop-searches (under the main police powers) in England and Wales decreased between 2011 and 2017, in the same period the disparity gap in fact widened - as arrests from drug searches halved for white people but remained stable for Black people.<sup>25</sup> Home Office figures released for 2019/20 reveal that the use of stop and search has increased again for a second consecutive year, and that “individuals from a Black, Asian and minority ethnic background were stopped at a rate 4.1 times higher than those who were from a white ethnic group.”<sup>26</sup> The disparity is particularly pronounced for Black individuals, who remain nine times more likely to be stopped and searched than white people. Notably, 63% of all stop and searches carried out in 2019/2020 were on suspicion of drugs possession, and 76% of all stop and searches resulted in no further action taken – 3% higher than in 2018/19.

A recent study on stop and search operations conducted in London between July and September 2020,<sup>27</sup> in the midst of a global pandemic, adds to this growing evidence of racial profiling by law enforcement, as well as of unjustified, disproportionate, and unreasonable use of these tactics. Of the over 65,000 people stopped and searched in that period (an increase from 2018 and 2019 figures), 65% were searched for drugs, with over three quarters of all searches resulting in no further action being taken. In other words, over 48,000 people were stopped and searched – predominantly for drugs – on the basis of unfounded suspicions. That success rates of stop and search further decreased from 2018 is additional indication that the ongoing resort to this practice is unjustified.<sup>28</sup> Figures on racial and age disparity are revealing, with Black men aged 18-24 being 19 times more likely to be stopped and searched than the general population. Black children (aged 10 – 17) were also stopped and searched, at significantly higher rates than white adults and white children.<sup>29</sup>

## 2. Prosecution, sentencing, and incarceration of people of African descent for drug offences

### 2.1. Brazil

Discrimination in the enforcement of drug control laws continues in the prosecution and sentencing stages. A study conducted in the city of São Paulo in 2017, for example, found that Black people were more likely to be prosecuted and sentenced for drug trafficking vis-à-vis drug possession.<sup>30</sup> Specifically, in almost 50% of drug trafficking cases involving white persons the offence is disqualified to drug possession for personal use, with a significant sentence reduction, while the same happens in only 5.3% of cases where the defendants are Black. At the same time, Black people are prosecuted and convicted for trafficking lower quantities of drugs than white defendants. In the case of cannabis, data from 2017 indicates that 71% of blacks were convicted for drug trafficking with a median seizure of 145 grams. Among white people, 64% were convicted with an average seizure of 1.14kgs. Similar trends can be witnessed in proceedings regarding other illicit drugs.<sup>31</sup>

<sup>24</sup> Shiner et al. (2018) *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, Release. Available at: <https://www.release.org.uk/publications/ColourOfInjustice>.

<sup>25</sup> Shiner et al. (2018) *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, Release. Available at: <https://www.release.org.uk/publications/ColourOfInjustice>, p.viii.

<sup>26</sup> Home Office (2020) *Police powers and procedures, England and Wales, year ending 31 March 2020 – Second Edition*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf).

<sup>27</sup> Matt Ashby, 'Stop and Search in London – July to September 2020', UCL. Available at: <https://discovery.ucl.ac.uk/id/eprint/10115766/1/2020-Q3.pdf>.

<sup>28</sup> Vikram Dodd, 'Young black males in London '19 times more likely to be stopped and searched', *The Guardian* (3 December 2020), <https://www.theguardian.com/law/2020/dec/03/young-black-males-in-london-19-times-more-likely-to-be-stopped-and-searched>.

<sup>29</sup> Ashby, 'Stop and Search in London – July to September 2020', p 5.

<sup>30</sup> Naomi Burke-Shyne and Colleen Daniels, 'Racism and Policing are Global Problems. Drug Control is a Vehicle', *TalkingDrugs* (4 June 2020), <https://www.talkingdrugs.org/racism-and-policing-are-global-problems-drug-control-is-a-vehicle>.

<sup>31</sup> <https://exame.com/brasil/negros-sao-mais-condenados-por-trafico-e-com-menos-drogas-em-sao-paulo/>

## 2.2. United Kingdom

With regards to prosecution and incarceration for drug offences, research undertaken by Release, StopWatch, and LSE in 2018 clearly found significant evidence of unequal treatment along racial lines. In particular:<sup>32</sup>

- Black people were prosecuted for drug offences at more than eight times the rate of white people in 2017;
- Black and Asian people were convicted of cannabis possession at 11.8 and 2.4 times the rate of white people, despite lower rates of self-reported use;
- Black people were less likely than white people to receive an out of court disposal, such as community resolutions or cautions – many of which result in no criminal record; and
- Black people were sentenced to immediate custody for drug offences at 9.1 times the rate of white people, but given suspended sentences at 5.6 times the rate of white people.

Similarly, the Lammy review concluded that the odds of receiving a prison sentence for a drug offence are around 240% higher for racial and ethnic minority offenders, compared to white offenders.<sup>33</sup>

The lack of measures to address ethnic disproportionalities in drug law enforcement, and the disproportionality in criminal justice outcomes for drug offences, is seen to particularly impact Black women. This is evidenced by the hugely disproportionate incarceration of Black women for drug offences compared to their white, female counterparts; with analysis of Crown Court sentences for drug offences in 2014 revealing that Black women were about 25% more likely than white women to be sentenced to custody at Crown Court<sup>34</sup>.

## 2.3. USA

In the US, data from 2018 indicates that 45% of people identified as 'Black' in federal prisons were incarcerated for a drug offence;<sup>35</sup> while Black Americans are 6–10 times more likely to be incarcerated for drug offenses than their white counterparts.<sup>36</sup> Such disparity cannot be explained with different rates of drug use;<sup>37</sup> rather, it is the direct consequence of the deliberate targeting by drug law enforcement of specific ethnicities and communities,<sup>38</sup> coupled with discriminatory drug laws and sentencing practices,<sup>39</sup> and discriminatory prosecutorial decisions. Notably, research published in 2013 concluded that prosecutors are two times more likely to pursue a mandatory minimum sentence for Black people than for white people, for the same crime.<sup>40</sup>

This has also been acknowledged by the Committee on the Elimination of Racial Discrimination (CERD), which in its 2014 Concluding Observations on the US expressed concerns for “the overrepresentation

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<sup>32</sup> Shiner et al. (2018) *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, Release. Available at: <https://www.release.org.uk/publications/ColourOfInjustice>.

<sup>33</sup> Lammy Review (2016) [The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System](#), p. 33.

<sup>34</sup> GOV.UK (2016) *Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales*, 19. <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>.

<sup>35</sup> E. Ann Carson, 'Prisoners in 2018', *U.S. Department of Justice* (April 2020), 23. <https://www.bjs.gov/content/pub/pdf/p18.pdf>

<sup>36</sup> Julie Netherland and Helena Hansen, 'White opioids: Pharmaceutical race and the war n drugs that wasn't', *Biosocieties* 12(2) (2017), <https://pubmed.ncbi.nlm.nih.gov/28690668/>.

<sup>37</sup> Ibid.

<sup>38</sup> For the USA, see Drug Policy Alliance, 'The Drug War, Mass Incarceration and Race' (January 2018), [https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf).

<sup>39</sup> Among others, see: Kerr and Jackson, 'Stigma, Sexual Risks, and the war on drugs: Examining drug policy and HIV/AIDS Inequities among African Americans using the Drug War HIV/AIDS Inequities Model'; Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

<sup>40</sup> Drug Policy Alliance, 'The Drug War, Mass Incarceration and Race' (January 2018), [https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race\\_01\\_18\\_0.pdf](https://drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf).

of racial and ethnic minorities in the criminal justice system [...] exacerbated by the use of prosecutorial discretion [and] the application of mandatory minimum drug-offence sentencing policies”, as well as for racial profiling against Black people (as well as other minority groups), disproportionately high rates of incarceration, and racially biased sentencing practices.<sup>41</sup>

### 3. Imposition of the death penalty for drug offences

The death penalty for drug offences is still envisaged in 35 jurisdictions worldwide, despite it being in clear violation of both international human rights<sup>42</sup> and international drug control laws.<sup>43</sup> Limited transparency by retentionist states, inadequate data collection and sharing, and poor consular assistance practices mean that complete and disaggregated information on those facing the death penalty is limited. Nevertheless, it is worth noting that in some jurisdictions foreign nationals, including people of African descent, appear to be overrepresented among the death row population.

For example, in Saudi Arabia: in 2018, out of 59 executions conducted for drug offences at least seven were of Nigerian nationals, and four of individuals from Northern Africa; in 2019, out of 84 executions confirmed at least 11 were of individuals from Northern Africa.<sup>44</sup> In Indonesia, six of the 14 people executed in 2015 and three of the four people executed in 2016 (all convicted of drug offences) were of African Descent.<sup>45</sup> It is worth noting that prejudice and bias against people of African Descent is believed to be one key factor in influencing the decision of who to execute among the individuals on death row. The court decision with which one of them, Jefferson Ejike Eleweke, was sentenced to death, has discriminatory undertones; with the Court explicitly mentioning Mr. Eleweke’s nationality and ethnicity as elements to be taken into consideration towards his death sentence.<sup>46</sup>

### 4. Social, economic, and health impacts of drug law enforcement

Disproportionate drug policing, prosecution, and sentencing along racial lines not only results in higher incarceration rates, but also produces significant secondary harms. Arrests and incarceration limit education and employment opportunities<sup>47</sup> as well as eligibility for social support and in some cases voting and parental rights, they increase stigma and discrimination, and are associated with negative health outcomes. For examples, research from the US indicates that an experience of incarceration is associated with an up to 23% decline in employment, and a 40% decline in income, with detrimental social, economic, and health consequences.<sup>48</sup>

Further, the experience of imprisonment has itself been repeatedly shown to increase the likelihood of drug use and drug dependency,<sup>49</sup> and recent analysis found that the proportion of people in prison

<sup>41</sup> Committee on Elimination of Racial Discrimination, ‘Concluding Observations on the combined seventh to ninth periodic reports of the United States of America’, UN Doc. CERD/C/USA/CO/7-9 (25 September 2014).

<sup>42</sup> Among others, see Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life. UN Doc CCPR/C/GC/36, Para. 26.

<sup>43</sup> Among others, see UNODC, ‘Statement attributable to the UNODC spokesperson on the use of the death penalty (27 June 2019).

<https://www.unodc.org/unodc/en/press/releases/2019/June/statement-attributable-to-the-unodc-spokesperson-on-the-use-of-the-death-penalty.html#:~:text=As%20part%20of%20the%20United,use%20of%20the%20death%20penalty.&text=But%20use%20of%20the%20death,durable%20solutions%20or%20protect%20people>

<sup>44</sup> Information from Harm Reduction International internal database on death sentences and executions, available upon request.

<sup>45</sup> ICJR, ‘Death Penalty Policy in Indonesia’, Jakarta: Institute for Criminal Justice Reform (2017), 167. Available from: <http://icjr.or.id/data/wpcontent/uploads/2018/08/DEATHPENALTY-POLICY-final-1.pdf>; Quiano K, ‘Indonesia executes four convicted drug offenders.’ *CNN*, 2016. Available from: <https://edition.cnn.com/2016/07/28/asia/indonesia-drug-executions/index.html>.

<sup>46</sup> Putusan Pengadilan Negeri Jakarta Pusat Nomor: 2152/Pid.B/2003/PN.JKT.PST, 6 April 2004.

<sup>47</sup> Hamilton, I., 2016. The most damaging gateway to hard drugs? Drugs policy itself. *The Conversation*. Available:

<https://theconversation.com/the-most-damaging-gateway-to-hard-drugs-drugs-policy-itself-55410>

<sup>48</sup> Kerr and Jackson, ‘Stigma, Sexual Risks, and the war on drugs: Examining drug policy and HIV/AIDS Inequities among African Americans using the Drug War HIV/AIDS Inequities Model’, 35.

<sup>49</sup> Penfold, C., Turnbull, P.J. and Webster, R. (2005) Tackling prison drug markets: An exploratory qualitative study. London: Home Office.; HMIP. 2016. Annual Report 2015–16. London: Her Majesty’s Inspectorate for England and Wales. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/571732/hmip-annual-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571732/hmip-annual-report.pdf); User Voice (2016)

reporting the development of a drug problem in prison in England and Wales rose 8.4 percentage points to almost 15% between 2013-14 and 2018-19<sup>50</sup>.

Specifically on **health**, criminalisation of people of African descent through drug control and disproportionate law enforcement have severe repercussions on the health of Black people and Black communities. Notably, a recent literature review conducted on nine countries found that policing is associated with higher risks of HIV infection among people who inject drugs and HIV risk behaviours, including avoidance of harm reduction services.<sup>51</sup> Similarly, fear of detection by law enforcement and the possibility of further increase the likelihood of high-risk drug taking behaviours.<sup>52</sup>

The predominant approach of drug control towards persons of African descent as criminals also translates into a lack of attention to the specific needs, risks, and experiences of people who use drugs who are part of this population. The end-result is a system that structurally marginalises, discriminates, and excludes Black people from access to quality, acceptable health services, including harm reduction and drug treatment services.

As acknowledged by the Working Group of Experts on People of African Descent, “health risks associated with unregulated use of narcotics are largely ignored where they principally impact people of African descent, including in detention settings which are high-risk environments for HIV, hepatitis C and tuberculosis transmission. There is lack of recognition that enduring racial disparities and race-based outcomes are related to policy priorities that are grounded in discrimination and negative racial stereotypes, including the targeting of minority communities of African origin rather than criminality.”<sup>53</sup> For example, the introduction of a more punitive approach to drugs in the US increased HIV vulnerability among people of African Descent and Black communities, “by exacerbating sexual risks, resource deprivation, social marginalization, and precarious access to health-promoting resources.”<sup>54</sup> At the same time, disproportionate policing and resource deprivation negatively impact on regular access to care as well as adherence to medication.<sup>55</sup>

In the UK (like other countries), substantial barriers are reported to accessing drug treatment services for ethnic minority individuals. People of colour, in particular Black people, face multiple and complex disadvantages and require service provision which is both culturally and religiously sensitive, and yet, there is a lack of drug treatment options that are appropriate to their needs.<sup>56</sup> Significant regard must be given to how health systems more generally fail this population, and that distrust is borne out of this failure, therefore working directly with groups that have been impacted is vital.<sup>57</sup>

Gender, sexual orientation, age, immigrant status, and class intersect with race, creating uniquely negative outcomes. Women, for example, are targeted by drug law enforcement in specific ways. For

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Spice: The Bird Killer. What Prisoners Think about the use of Spice and other legal highs in Prison. Available at:

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<sup>50</sup> Shilson-Thomas, A. (2020) The prison system: Priorities for investment. Reform. Available at: <https://reform.uk/research/prison-system-priorities-investment>.

<sup>51</sup> Pieter Baker et al., ‘Policing practices and HIV risk among people who inject drugs – a systematic literature review’, *Epidemiologic Reviews* (2020), <https://academic.oup.com/epirev/advance-article-abstract/doi/10.1093/epirev/mxaa010/5979505>.

<sup>52</sup> UNODC (2016) *World Drug Report 2016*; Fisher H. & Measham F, *Night Lives: Reducing Drug-Related Harm in the Night Time Economy*, Durham University, the APPG on Drug Policy Reform, The Loop & Volteface (2018).

<sup>53</sup> OHCHR, ‘Fight against world drug problem must address unjust impact on people of African descent, say UN experts’ (Geneva, 14 March 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24332&LangID=E>.

<sup>54</sup> Kerr and Jackson, ‘Stigma, Sexual Risks, and the war on drugs: Examining drug policy and HIV/AIDS Inequities among African Americans using the Drug War HIV/AIDS Inequities Model’, 32.

<sup>55</sup> *Ibid*, 36.

<sup>56</sup> UKDPC, ‘Drugs and Diversity: Ethnic Minority Groups’, *UK Drug Policy Commission* (2010), [https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Drugs%20and%20diversity%20ethnic%20minority%20groups%20\(policy%20briefing\).pdf](https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Drugs%20and%20diversity%20ethnic%20minority%20groups%20(policy%20briefing).pdf).

<sup>57</sup> For more on this issue, see Release’s Written Submission to the Dame Carol Black Review (Phase 2). Available at:

<https://www.release.org.uk/publications/written-submission-dame-carol-black-review-0>; Tracey Bignall et al., ‘Racial Disparities in Mental Health: Literature and evidence review’, *Race Equality Foundation* (2019), <https://raceequalityfoundation.org.uk/wp-content/uploads/2020/03/mental-health-report-v5-2.pdf>.

example, a 2007 study among pregnant women in the US found that “Black women were 1.5 times more likely to be tested for illicit drugs than non-black women, despite similar rates of testing positive. Another study found that black women testing positive were ten times more likely to be reported to child protective services.”<sup>58</sup>

## 5. Lack of complete and disaggregated data on drug policy, law enforcement, and race

An issue that impinges on the ability to adequately assess the interlinkages between drug law enforcement and discrimination against people of African descent is the lack, in many countries, of data on drug law enforcement (policing, arrests, prosecution, sentencing, and incarceration), as well as on health, disaggregated by race as well as by gender, sexual orientation, age, and other status. This can be linked to a failure of states to collect data, and/or to an unwillingness to release such information. In South Africa, for example, annual crime statistics include figures on drug arrests. However, those figures are aggregated and generalised, “and contain little information relating to the arrest process, conviction rates, and any specific details.”<sup>59</sup> Similarly in Canada, sources report that no data is collected and released on race and crime, making it difficult to assess the impact of drug law enforcement on specific groups.<sup>60</sup>

With regards to health data, criminalisation and disproportionate law enforcement inevitably hinders the collection of realistic, disaggregated data, and work to invisibilise the experiences and needs of certain populations – with a direct impact on availability and acceptability of quality health services.

In the UK, Release recommends that all published data which records trends by ethnicity (for example, stop searches, criminal justice outcomes) also disaggregate trends by gender. This data is collected but is often not presented.<sup>61</sup> For example, the annual Police Powers and Procedures reports for England and Wales (which include stop and search, and arrest, data) present a breakdown and comparison by ethnicity, and by sex, but disaggregation by sex *and* ethnicity is not presented in public-facing documents. At the same time, there is also a distinct lack of research on intersectional disproportionality at every stage of the criminal justice system more broadly.

The lack of disaggregated data, especially on the targets of drug law enforcement and the functioning of the criminal legal system, has the effect of making some populations invisible, ‘hiding’ the experiences of, and potentially disproportionate impact on, specific groups.

Importantly, calls for collecting and releasing more accurate data should not translate in increased control and surveillance of already heavily policed groups; but rather focus on the need to adequately evaluate the impact of drug policies, and in turn develop and implement more just and effective ones.

## 6. Good practices

Evidence, some of which presented in previous paragraphs, suggests that drug law enforcement is inherently discriminatory, and disproportionately targeted at people of African descent. As a consequence, piecemeal reforms or limited adjustments are by nature inadequate to confront and redress its impacts. As a consequence, systemic reforms of drug control policies and practices are required, which remove or dramatically reduce law enforcement engagement in favour of public health and human rights centred approaches.

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<sup>58</sup> ‘Criminalizing Pregnancy: Policing Pregnant Women who Use Drugs in the USA’, *Amnesty International* (2017), <https://www.amnesty.org/download/Documents/AMR5162032017ENGLISH.pdf>.

<sup>59</sup> Shelly, ‘Perpetuating Apartheid: South African Drug Policy’.

<sup>60</sup> Koram (ed.), *The War on Drugs and the Global Colour Line*, 39.

<sup>61</sup> Unless one conducts their own analysis of the excel data spreadsheets accompanying such reports.

Decriminalisation, as well as regulation, of drugs can have positive health, social, and legal outcomes<sup>62</sup> - although they are not in itself sufficient to reduce drug law enforcement and its disproportionate impacts on people of African descent. Indeed, research on the US and Canada suggest that in a context of decriminalisation the divide between white and Black people may remain untouched, or even worsen; with white individuals and communities benefitting economically from more progressive policies while drug law enforcement further concentrates in predominantly Black neighbourhoods. In addition, decriminalisation or regulation should be accompanied by policies aimed at reversing the damages produced by aggressive drug law enforcement on specific communities.<sup>63</sup>

In absence of decriminalisation, reforms are required that significantly reduce law enforcement powers related to drug control, starting from those more prone to abuse – such as stop and search powers, and that prioritise drug diversion. Some positive examples, although localised, can be observed around the world.<sup>64</sup>

## 7. Conclusions and recommendations

The information presented in this submission clearly indicates that any analysis of race and law enforcement, in the US as well as elsewhere, cannot prescind from integrating drug policy and drug law enforcement. We respectfully urge your Office to highlight in the upcoming report the extent to which drug law enforcement reproduces and exacerbates racial discrimination, while calling for further research.

We further encourage your Office to reiterate the conclusion of the UN Working Group of Experts on People of African Descent that “states fighting the world drug problem must acknowledge the devastating impact of their methods on people of African descent, and amend them as necessary. They must address the racial discrimination in enforcement of drug laws, systemic and race-based denial of human rights, and ongoing acceptance of stark racial disparities in prosecution and incarceration that are not commensurate with actual rates of trafficking or use of narcotics or other legitimate criminal justice priorities.”

The upcoming report, pursuant to HRC Resolution 43/1, is also an important opportunity for your Office to urge the Human Rights Council to:

- Urge Member States to:
  - Assess, evaluate, and critically review the unique legal, economic, social and health of domestic drug law enforcement on people of African descent; including by collecting and releasing data which is updated and disaggregated by gender, race, age, and other relevant status;
  - Prioritise public health and human rights centred approaches to drugs, and repeal drug policies that enable violations of international human rights law against Africans and people of African descent;
  - Ensure the availability and accessibility of health services, including harm reduction services which are adequately address the needs and experiences of people of African descent, including women, LGBTQI+, and young people. To achieve this, service users – including Black men and women who use drugs – should be meaningfully engaged in the design, implementation, and evaluation of harm reduction and drug treatment services;

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<sup>62</sup> Among others, see GCDP, ‘Advancing Drug Policy Reform: A New Approach to Decriminalization’, *Global Commission on Drug Policy* (2016), <https://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf>.

<sup>63</sup> Steven W. Bender, ‘The Colors of Cannabis: Race and Marijuana’, *University of California, Davis* 50, [https://lawreview.law.ucdavis.edu/issues/50/2/Topic/50-2\\_Bender.pdf](https://lawreview.law.ucdavis.edu/issues/50/2/Topic/50-2_Bender.pdf); Koram (ed.), *The War on Drugs and the Global Colour Line*, 39.

<sup>64</sup> For more, see Release’s Written Submission to the Dame Carol Black Review (Phase 2). Available at: <https://www.release.org.uk/publications/written-submission-dame-carol-black-review-0>, 29.

- Ensure that drug policy reforms, including those that decriminalise drug use, possession, cultivation and sale, integrate measures that acknowledge and redress the impact of criminalisation on specific communities, and support those communities in enjoying the economic and social benefits of those reform.
- Identify punitive drug control as a policy that significantly contributes to the disproportionate policing, arrest, and incarceration of people of African descent, and accordingly endorse the decriminalisation of drug use and possession – as a first steps towards less punitive policies;
- Entrust Special Procedures, such as the Working Group of Experts on People of African Descent, to report on the impact of drug control policies on people of African descent, including /relationship btw racism, drug policy and police violence.