

Submission to OHCHR 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 through transformative change for racial justice and equality”, pursuant to Human Rights Council resolution 47/21

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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.

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

Harm Reduction International and Release are pleased to share this submission with the UN Office of the High Commissioner for Human Rights to help inform the preparation of its latest report pursuant to Human Rights Council resolution 47/21.

This submission focuses on the discriminatory application of drug law enforcement on Africans and people of African descent. It provides evidence of its negative and discriminatory impacts, with a focus on the United Kingdom, and reviews some of the flaws, failures and prospects of reliable data collection, disaggregation, evaluation, and dissemination on national and global drug policies, as well as their implementation and impacts. Finally, it provides a brief examination of possible ways to address the inherently racist nature of punitive drug policies, including full decriminalisation, decarceration, and divestment and redirection of resources. Other useful measures explored, and which can be implemented immediately, are diversion schemes and training and sensitisation campaigns for judges and law enforcement officials. It is hoped that the information provided in this submission contributes to the promotion and protection of the human rights and fundamental freedoms of Africans and people of African descent against systemic racial discrimination and other human rights violations by law enforcement, and their discriminatory outcomes, in the context of drug control.

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; as reiterated by the 2021 OHCHR report 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.¹

The same report found that the three key contexts in which over 85 percent of analysed police-related fatalities occurred are: policing of minor offences, intervention of law enforcement officials as first responders in mental health crises, and the conduct of special operations (including drug control operations). All three contexts are closely related to drug law enforcement.² Accordingly, the report recommended that governments tackle “the discriminatory application of criminal law [...] at every stage, including by reforming drug-related policies, laws and practices with discriminatory outcomes, in line with international human rights standards.”³ The related conference room paper, published on 28 June 2021, went deeper into the disproportionate impact of drug law enforcement on People of African Descent and the instrumental role of drug control in perpetuating structural racism, presenting data from several countries. Among others, it noted with concern the militarisation of drug law enforcement in the context of the war on drugs in several countries.⁴

The report of the UN Working Group of Arbitrary Detention on arbitrary detention relating to drug policies, released in May 2021, similarly found that “the war on drugs may be understood to a

¹ a/hrc/47/53 para 25

² Para. 30

³ Para. 42 (under ‘ending impunity’)

⁴ https://www.ohchr.org/sites/default/files/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf

significant extent as a war on people. Its impact is often greatest on those who are poor, but also frequently overlaps with discrimination in law enforcement directed at vulnerable groups,”⁵ including people of African descent.

These and other resources demonstrate how punitive drug control policies provide the national as well as global architecture within which racist policing practices and mass incarceration can operate.

A. Ongoing issues

1. Racial discrimination in drug law enforcement/racial profiling

Drug law enforcement, and the prioritisation of low-level drug offences by the police, are a key factor in the overrepresentation of ethnic minority individuals in the criminal justice system.

Over half a million people are subject to police stop and search every year in England and Wales. The disproportionate targeting of Black individuals and communities by drug law enforcement clearly emerges by the analysis of how stop and search is employed. Systemic racial discrimination in the use of police powers is well-evidenced, with drug law enforcement driving this trend given that 69% of all searches under the main police powers in the year ending March 2021 (2020/21) were searches for drugs⁶ - an *increase* from drug searches making up 63% of all searches in the previous year (2019/20).⁷ In the last 12 months, between February 2021 and February 2022, 65% percent of all searches carried out by the Metropolitan Police were for drugs, and this will largely be for suspected (personal) possession.⁸ A 2021 report by Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) - who examine police efficacy - confirmed that “drug searches influence the disproportionality rate more than other types of search”.⁹

UK Home Office figures for 2020/21 reveal that Black and other ethnic minority groups *continue* to be more likely to be stopped and searched than White people. For all stop searches in 2020/21 in England and Wales, people *self-defining* as ‘Black, Asian, and Minority Ethnic’ were 3.5 times more likely to be searched than White people. The disparity was particularly pronounced for people *self-defining* as

⁵ a/hrc/47/40 para. 51

⁶ Home Office (2021) Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>.

⁷ Home Office (2020) Police powers and procedures, England and Wales, year ending 31 March 2020 – Second Edition. Available: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2020>

⁸ Metropolitan Police Stop and Search Dashboard, <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard/>.

⁹ HMICFRS (2021). Disproportionate use of police powers A spotlight on stop and search and the use of force. Available: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>, p.6.

'Black', who were 7 times more likely to be stopped and searched than White people,¹⁰ despite being no more likely than the White population to use controlled substances.¹¹

Using officer-observed ethnicity in place of self-defined ethnicity (when the latter was 'not stated') the disparity for Black, Asian or other minority ethnic groups in 2020/21 was **4.2** (compared with 3.5 using the measure solely using self-defined ethnicity data). There was a relatively larger increase when looking at the differential for Black people, who had a disparity of **8.7** using this methodology (compared with 7.0 using the measure solely using self-defined ethnicity data), and a relatively smaller increase in the differential for Asian people, who had a disparity of **2.7** using this methodology (compared with 2.4 using the measure solely using self-defined ethnicity data).¹²

These 2020/21 Home Office figures do indicate a small *reduction* in racial disparity from the previous year (2019/20) if comparing the *self-defined (only) ethnicity group* disparities in all stop searches under the main police powers. However, stark and unjustified disparities still remain at the national level, and increases are seen in the *volume* of stop searches being carried out in 2020/21 (discussed further below). Whilst disparities in stop and search at the national level can mask differences in the size and make up of local populations within each police force area, Black people *consistently* endure the highest recorded stop and search rate. In light of this inequity, alongside evidence that the majority of searches result in officers finding nothing - with only 20% of all searches under the main police powers in 2020/21 resulting in an outcome linked to the reason for the search (and only 25% of specifically *drug* searches)¹³ – we echo the 2021 HMICFRS report's call for "an evidence-based national debate on the use of stop and search in the policing of controlled drugs" in the UK.¹⁴

The Home Office figures released for 2020/21 reveal that the *use* of stop and search in England and Wales has increased again for a third consecutive year, and there was a 24% increase in stop and search under the main police powers in 2020/21 during the height of the global COVID-19 health pandemic¹⁵. A research study on stop and search operations conducted in London specifically between July and September 2020 adds to the growing evidence of racial profiling by law enforcement, as well as of unjustified, disproportionate, and unreasonable use of these tactics.¹⁶ Of the over 65,000 people stopped and searched in that period (an increase from 2018 and 2019), 65% were searched for drugs,

¹⁰ Home Office (2021) Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>.

¹¹ Office for National Statistics (2019) Drug Misuse: Findings from the 2018/19 CSEW: Data Tables (Table 3.01 Proportion of 16 to 59-year olds reporting use of drugs in the last year by personal characteristics, 2018/19), <https://www.gov.uk/government/statistics/drug-misuse-findings-from-the-2018-to-2019-csew>.

¹² Home Office (2021) Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>

¹³ Ibid.

¹⁴ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2021) Disproportionate use of police powers A spotlight on stop and search and the use of force, <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>, p.2.

¹⁵ Home Office (2021) Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>.

¹⁶ Ashby, M. (2020) Stop and Search in London – July to September 2020, UCL, <http://discovery.ucl.ac.uk/id/eprint/10115766/>.

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. Figures on racial and age disparity in this study were 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.¹⁷

In the context of the COVID-19 pandemic, it was also concerning to see that the London boroughs with the highest proportion of searches were Westminster, Lambeth, Tower Hamlets, Newham and Southwark - boroughs with some of the highest number of reported deaths related to COVID-19.¹⁸ Furthermore, in response to the COVID-19 pandemic, the UK government introduced unprecedented police powers under the Health Protection (Coronavirus) Regulations and the Coronavirus Act to enforce the first lockdown with heavy fines and the threat of criminal penalties. In a “collision of crises” as described by the Runnymede Trust,¹⁹ research by Liberty Human Rights and the NPCC²⁰ found stark disparity with which these powers were used against people of colour compared with White people: across England and Wales, people of colour were 1.6 times more likely to be fined than White people.²¹

The 2021 HMICFRS report confirms that disproportionality and discrimination extend beyond *who* is searched to the actual *execution* of such searches.²² 2019/20 data indicates that Black people were almost 6 times more likely to have force used on them than White people. The data further shows that officers were more than 9 times as likely to have drawn Tasers (but not discharged them) on Black people than on White people. Additionally, Black people were 8 times more likely to be ‘compliant handcuffed on used guard bite and spit a have to likely more times 3 over and people, White than ²³’ them than White people. The HMICFRS report continues that “the reasons for this are unclear. It could mean that force is used on Black people with *less justification* than on White people, or there could be other explanations. This needs further exploration.”²⁴

Ethnic disparities introduced by stop and search and other forms of police activity follow through to prosecution, conviction, and sentencing. In the United Kingdom, the 2017 Lammy Review concluded

¹⁷ Ibid

¹⁸ Bernard, J. & Robinson, I. (2020) UK Policing During The COVID-19 Pandemic. Talking Drugs, <https://www.talkingdrugs.org/uk-policing-during-the-covid-19-pandemic>

¹⁹ Harris, S., Joseph-Salisbury, R., Williams, P. & White, L. (2021). A Collision of Crises: Racism, policing, and the COVID-19 pandemic. *The Runnymede Trust*, <https://researchonline.ljmu.ac.uk/id/eprint/15181/1/Runnymede%20CoDE%20A%20Collision%20of%20Crises%20FINAL.pdf>.

²⁰ <https://news.npcc.police.uk/resources/policing-the-pandemic-4>.

²¹ Liberty Human Rights (2020) COVID Police Fines Misused Warn Rights Groups, <https://www.libertyhumanrights.org.uk/issue/covid-police-fines-misused-warn-rights-groups/>.

²² *To note: whilst data about the use of Tasers/firearms has been collected for several years, data about use of force in general has been collected only since 2017, and so is not yet fully developed and has some limitations.* HMICFRS (2021). Disproportionate use of police powers A spotlight on stop and search and the use of force. Available: <https://www.justiceinspectores.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>;

²³ *Compliant handcuffing means handcuffs are applied when the subject is compliant.*

²⁴ HMICFRS (2021). Disproportionate use of police powers A spotlight on stop and search and the use of force. Available: <https://www.justiceinspectores.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>, p.5.

that the odds of receiving a prison sentence for a drug offence were around 240% higher for ethnic minority offenders compared to White offenders.²⁵ Research undertaken by Release, StopWatch, and LSE in 2018 identified a number of ways in which sentencing disparities in England and Wales *further* perpetuate the injustice that begins at stop and search.²⁶ Similarly in the US, Black people are incarcerated at 5 times the rate of white people. Black people comprise 57 percent of all people incarcerated in state prisons, and 77 percent of people incarcerated in federal prisons for drug offences are Black or Latino despite these populations making up just 30 percent of the US population.²⁷

In this context, it is also worth highlighting that disproportionate drug policing, prosecution, and sentencing along racial lines not only results in higher incarceration rates, but also produces significant secondary harms. The experience of imprisonment has itself been repeatedly shown to increase the likelihood of drug use and drug dependency,²⁸ and analysis by the organisation 'Reform' found that the proportion of people 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 2018/19.²⁹

2. Collection, monitoring and dissemination of disaggregated data

The gathering and dissemination of reliable, disaggregated data on the impact of drug policies on different groups remains a key challenge in many countries. 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."³⁰ 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.³¹ In Scotland, disaggregated data on ethnicity are not effectively collected in the context of initial treatment engagement, thus the Scottish Drug Misuse Database does not disaggregate by ethnicity (despite disaggregating by gender, age, living situation, and more).³² Annual drug-related death figures from the Office for National Statistics (ONS), which record deaths due to drug poisoning occurring in

²⁵ Lammy, D. (2017) The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. HM Government. Available at: <https://www.gov.uk/government/publications/lammy-review-final-report>

²⁶ 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>

²⁷ NAACP, 'Criminal Justice Fact Sheet' [web page, accessed October 2021].

²⁸ Penfold, C., Turnbull, P.J. & 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: https://www.researchgate.net/publication/237776662_Tackling_Prison_Drug_Markets_An_Exploratory_Qualitative_Study; User Voice (2016) Spice: The Bird Killer. What Prisoners Think about the use of Spice and other legal highs in Prison. Available: <https://www.uservoice.org/consultations/spice-use-in-prison/>; HM Inspectorate of Prisons (2015) Changing Patterns of Substance Misuse in Adult Prisons and Service Responses, pp. 37– 38.

²⁹ Shilson-Thomas, A. (2020) The prison system: Priorities for investment. Reform. Available: <https://reform.uk/research/prison-system-priorities-investment>.

³⁰ Shelly, 'Perpetuating Apartheid: South African Drug Policy'.

³¹ Koram (ed.), *The War on Drugs and the Global Colour Line*, 39.

³² Information provided by Scottish Drugs Forum. For more information see Public Health Scotland (2021) Scottish Drug Misuse Database – Overview of the Initial Assessment for Specialist Drug Treatment 2019/2020. Available: <https://beta.isdscotland.org/find-publications-and-data/lifestyle-and-behaviours/substance-use/scottish-drug-misuse-database>

England and Wales,³³ do not collect ethnicity data as ethnicity has not traditionally been recorded on death certificates in England and Wales. The ONS are working on analysis of drug deaths by ethnicity group, including a data linkage project with the Census, but still do not have a publication date as of yet.

In some instances, relevant data/disaggregation is collected, but not publicly presented.³⁴ For example, the annual Police Powers and Procedures report for England and Wales,³⁵ which presents stop and search/ arrest data, has historically presented a breakdown and comparison by ethnicity group, and by sex, but disaggregation by sex *and* ethnicity has not been presented in public-facing documents. In the most *recent* iteration of the report, for the year ending March 2021, this analysis has been conducted and a select few *key* (written) findings are presented, including that males aged 15-34 from a Black, Asian or other minority ethnic background account for 32% of stop and search in 2020/21, despite only comprising 2.6% of the population.³⁶ However, the data is not made readily available for further analysis. The Metropolitan Police (London, England) have made their stop and search data more publicly available through an interactive online dashboard,³⁷ whereby data can be visibly disaggregated by sex, age, and ethnicity. However, these breakdowns are provided separately i.e. these variables remain independent of one another. This serves to invisibilise the experiences and needs of certain populations; with gender and age - as well as sexual orientation, immigrant status, and socioeconomic status - often *intersecting* with ethnicity, and creating uniquely negative outcomes. When intersectional experiences *are* measured and seen, phenomena such as the hugely disproportionate incarceration of Black women for drug offences compared to their White, female counterparts, can be observed.³⁸ Compounding this issue further is a distinct lack of *research* on intersectional experiences at every stage of the criminal justice system.

Where ethnicity data *is* collected, it is not always collected consistently or accurately. A recently released report from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) highlights the inaccurate and inconsistent measurement of ethnicity by police forces in England and Wales during stop and search procedures, continuing that "a failure to record ethnicity data in an increasing proportion of records is *hiding* the true disproportionality rate. This means that some forces are not able to see the full picture".³⁹

One of the causes of such failure to collect and disaggregate data on the disproportionate negative impacts of drug control on racial and ethnic groups is the overwhelming focus of both national and

³³ Latest report: ONS (2021) Deaths related to drug poisoning in England and Wales: 2020 registrations. Available: <https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/deathsrelatedtodrugpoisoninginenglandandwales/2020>.

³⁴ *Unless one conducts their own secondary data analysis using the excel data spreadsheets which, in some instances, accompany reports.*

³⁵ *Latest report:* Home Office (2021) Police powers and procedures: stop and search and arrests, England and Wales, year ending 31 March 2021. Available: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>.

³⁶ Home Office (2021) Police powers and procedures: stop and search and arrests, England and Wales, year ending 31 March 2021. Available: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>.

³⁷ <https://www.met.police.uk/sd/stats-and-data/met/stop-and-search-dashboard/>.

³⁸ GOV.UK (2016) Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales. Available: <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales>, p.19

³⁹ HMICFRS (2021) Disproportionate use of police powers A spotlight on stop and search and the use of force. Available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>, p.6.

international authorities on figures related to drug supply – such as seizures and arrests – as indicators of drug policies' effectiveness. Less (if any) attention is paid to systematically and comprehensively monitor, quantify and assess the human rights impacts of these policies. A notable example at the international level is that of the UNODC Annual Report Questionnaire (ARQ), the survey through which the UN system collects information from member states on drug control. In turn, the information gathered lays the foundation for key drug policy choices. As highlighted by experts, "information collected from states via the ARQ remains dominated by a concern for scale and flows. This is at the expense of attention focusing on the harm associated with not only drug markets, but also policies designed to significantly and measurably reduce and ultimately eliminate them."⁴⁰

B. Action [taken] globally towards transformative change for racial justice and equality

1) Progresses, lessons learned and challenges on data collection (Recommendation no. I.3 and II.3 of the Agenda Towards Transformative Change)

At the national level, as revealed in the above section, there is often a distinct lack of data and research on intersectional discrimination. Data is often collected on several disaggregated grounds - such as ethnicity, gender and age - but presented in a siloed way. So, for example, a breakdown and comparison of stop and search data by ethnicity and by sex might be available, but disaggregation by gender *and* ethnicity will not. All published data at the national level which records trends on ethnicity should also disaggregate by gender and age and other prohibited grounds to reveal the experiences and disproportionate impact on specific groups.

There is also a need to collect and release more accurate data at the international level. Indeed, there have been growing calls over the years for a revision of the Annual Report Questionnaire (ARQ), the international data-collection mechanism used by the United Nations drug control system to understand the state of the "world drug problem." The data collected through this mechanism, which has traditionally focused on measures but not their consequences, is used to produce the most important document summarising current developments in the area of drug policy: the United Nations Office on Drugs and Crime (UNODC)'s annual World Drug Report. After two expert workshops in 2018 and 2019 and a considerable amount of consultation, UNODC launched its new ARQ in May 2021.⁴¹ While some consider them to be an "important step towards a more sustainable global drug policy",⁴² they do not go far enough to measure human rights outcomes. For example, the questions related to the criminal justice process ask for disaggregation on the basis of sex, age and sometimes citizenship, completely missing the opportunity to systematically uncover discrimination on the basis of other grounds, including race and ethnic origin.⁴³ 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,

⁴⁰ Bewley-Taylor, Dave and Nougier, Marie (Jan 2018) *Measuring the 'world drug problem': ARQ Revision. Beyond traditional indicators?* Available at: <http://fileserv.idpc.net/library/GDPO%20Working%20Paper%20No3%2012018.pdf>

⁴¹ See UNODC's page on the Annual Report Questionnaire, available at: <https://www.unodc.org/unodc/en/data-and-analysis/arq.html>

⁴² Global Partnership on Drug Policies and Development, *ARQ Reform: Why a questionnaire shapes drug policy*, Available at: <https://www.gdpd.org/en/drug-policy/international-drug-policies-with-perspective/arq-reform-why-a-questionnaire-shapes-drug-policy>

⁴³ The ARQs can be downloaded on UNODC's ARQ page here: <https://www.unodc.org/unodc/en/data-and-analysis/arq.html>

specific groups. Apart from disaggregating on the basis of race and ethnicity, another concrete way to ensure that more accurate data is used to understand the global drug situation would be to include data collected by all relevant UN agencies, such as OHCHR and UNDP, as well as civil society working on these issues.⁴⁴

Importantly, calls for collecting and releasing more accurate data should not translate into 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. One critical and welcome development in 2021 was the launch of the [Global Drug Policy Index](#), an alternative data-collection and evaluation tool which offers the first-ever global analysis of drug policies and their implementation. Developed by civil society, community organisations and academia, the tool diverges from outdated and harmful drug policy measurements which have focussed 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. As Helen Clarke, Chair of the Global Commission on Drug Policy, explains, “[t]he end goal of the Index is to initiate constructive discussions about what needs to change, emphasise the importance of evidence- and rights-based drug policies, and guide policy making priorities and reforms over the years to come.”⁴⁵

2) Reimagine policing and the criminal justice system (Recommendation no. 6 of the Agenda Towards Transformative Change)

The evidence provided throughout this submission points to the inherently racist nature of punitive drug policies. As observed by the UN Working Group on Arbitrary Detention, criminalisation of drug use facilitates the deployment of the criminal justice system against drug users in a discriminatory way, with law enforcement officers often targeting members of vulnerable and marginalised groups, such as minorities, people of African descent.⁴⁶ As such, a key element of any solution must be full decriminalisation, defined by the International Network of People who Use Drugs (INPUD) as “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.”⁴⁷

A recent systematic review of impact evaluations of drug decriminalisation and legal regulation found that current metrics used disproportionately focus on drug use prevalence, which does not provide a comprehensive understanding of the breadth of the impacts that drug law reforms can have.⁴⁸ While a broader set of metrics is urgently needed, there is still considerable evidence that this kind of policy shift can be widely beneficial. For example, after drugs were decriminalised in Portugal, the government refocused efforts and resources on treatment and harm reduction. While no significant increase in drug use was observed, there was a dramatic reduction in new HIV infections among

⁴⁴ Bewley-Taylor, Dave and Nougier, Marie (Jan 2018) *Measuring the ‘world drug problem’: ARQ Revision. Beyond traditional indicators?* Available at: <http://fileserver.idpc.net/library/GDPO%20Working%20Paper%20No3%20012018.pdf>

⁴⁵ The Global Drug Policy Index, November 2021. Available at: <http://fileserver.idpc.net/library/2021-10-GDPI-Analytical-Report-ExecSumm-Spreads-EN.pdf>

⁴⁶ a/hrc/47/40 para. 51

⁴⁷ <https://inpud.net/drug-decriminalisation-progress-or-political-red-herring/>

⁴⁸ Scheim AI, Maghsoudi N, Marshall Z, *et al.* Impact evaluations of drug decriminalisation and legal regulation on drug use, health and social harms: a systematic review, *BMJ Open* 2020; **10**:e035148. Available at: <https://bmjopen.bmj.com/content/10/9/e035148>

people who inject drugs (from 1,575 in 2000 to just 78 in 2013), as well as drug-induced mortality, from 80 deaths in 2001 to just 16 in 2012.⁴⁹ The number of people receiving drug treatment also rose significantly, with three-quarters of people who use opioids receiving opioid substitution therapy since 2008.⁵⁰

Unsurprisingly, decriminalisation also saw a reduction in Portugal's prison population.⁵¹ Indeed, at a time when 1 in 5 people – and 1 in 3 women - in prison globally are detained because of drug offences, decriminalisation must be accompanied by decarceration and releasing people held in custody or in prisons because of drug offences.⁵² These efforts should be combined with another key intervention related to decriminalisation, that is, divestment and redirection of resources from law enforcement to social, health and other community programmes and services that are much better suited to respond to social problems, and ultimately challenge and dismantle destructive policies and oppressive systems.

Currently, government funding for ineffective, punitive and racist law enforcement responses to drugs globally is wholly disproportionate to government expenditure on interventions that address the social inequalities and conditions that cause criminality. In the UK, for example, the central government spend on drug law enforcement and related activities is estimated to be approximately £1.41 billion per annum (based on 2016/17);⁵³ despite growing evidence of its ineffectiveness from drug control, health, and human rights perspectives. This type of disproportionate spending can be seen in countries all over the world.⁵⁴ In Thailand, for example, the government's allocation for drug law enforcement activities is around 1,500 times its highest contribution to harm reduction, which was reported to be USD 3.8 million in 2019.⁵⁵ Research by Harm Reduction International has found that redirecting just 1% of Thailand's total drug law enforcement budget would cover the funding gap for HIV prevention among people who inject drugs for the next two years.⁵⁶

In order for racial justice and equality to be achieved, the drug policy landscape must be able to operate entirely separately from the carceral state, without policing, prisons, surveillance, and coercion.⁵⁷ There are now several examples of alternative approaches to incarceration, and divestment and redirection campaigns taking place globally, including in several cities in the United States. In Denver, Colorado, for example, the city sends medics and clinicians instead of the police out

⁴⁹ Transform Drug Policy (13 May, 2021), 'Drug Decriminalisation in Portugal: Setting the Record Straight '

⁵⁰ Frakt, Austin (5 October 2020), "Pointers from Portugal on Addiction and the Drug War", *The New York Times*. Available at: <https://www.nytimes.com/2020/10/05/upshot/portugal-drug-legalization-treatment.html>

⁵¹ Hughes, Caitlin Elizabeth and Stevens, Alex (2007) *The effects of the decriminalization of drug use in Portugal*. Discussion paper. The Beckley Foundation, Oxford.

⁵² Daniels, C., Aluso, A., Burke-Shyne, N. *et al.* Decolonizing drug policy. *Harm Reduction Journal* 18, 120 (2021). Available at: <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00564-7#Fn43>

⁵³ Black, C. (2020) Review of Drugs - evidence relating to drug use, supply and effects, including current trends and future risks, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882953/Review_of_Drugs_Evidence_Pack.pdf.

⁵⁴ See, generally, the work of Harm Reduction International's Sustainable Financing team: <https://www.hri.global/sustainable-financing>

⁵⁵ Harm Reduction International (September 2021). *Divest. Redirect. Invest. The case for redirecting funds from ineffective drug law enforcement to harm reduction - spotlight on six countries in Asia*. Available at: https://www.hri.global/files/2021/10/20/HRI_Briefing_Redirection_Oct_2021.pdf

⁵⁶ *Ibid.*

⁵⁷ Daniels, C., Aluso, A., Burke-Shyne, N. *et al.* Decolonizing drug policy. *Harm Reduction Journal* 18, 120 (2021). Available at: <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00564-7#Fn43>

on emergency calls related to mental health, homeless and substance use. As a result, people in crisis received healthcare and opportunities to heal without having to deal with the police on 748 occasions, and without a single arrest.⁵⁸ In Austin, Texas, the city council redirected USD 150 million in funds from law enforcement to purchase housing for people experiencing homelessness, and to expand healthcare, access to food and prevent violence, while in New York City, there are plans to redistribute USD 1 billion to youth, education and other social services.⁵⁹

In the *absence* of decriminalisation, there are still useful measures that can be employed, including pre-arrest drug *diversion* schemes. The handful of diversion schemes that have been established so far in the UK exist due to police leadership, in the absence of political leadership, on this issue. Thames Valley Police (TVP), as an example, piloted a drug diversion scheme in the West Berkshire Local Policing Area (LPA) using diversion to a drug service provider in lieu of traditional criminal justice pathways. TVP then shared their learning of diversion with schools in the LPA so that schools were able to adopt, and lead, a similar scheme in relation to finding proportionate alternatives in lieu of school *exclusion*. It is important that school-led schemes be rolled out which seek to replace exclusion given the evidence of exclusion *inequity*⁶⁰ and the established link between school exclusion and young people's risk of exploitation and involvement in criminal activity.⁶¹

There is also an important role for judges to play in helping to address and ensuring accountability for racist policing and criminal justice systems. For example, in June 2020 an Indian judge expressed contempt and concern for a racial slur used in an official police document to refer to a Nigerian national facing trial for a drug crime. The judge noted how “[t]he police appears to have assumed that every black [person] is a drug peddler and should be treated as such. This is terrible thinking.” Consequently, the judge instructed the Director General of Punjab Police to notify the police force never to use the denounced term and called for disciplinary action to be taken against the responsible police officers. Sensitisation campaigns could be used to encourage more of this kind of judicial leadership and activism. This also highlights a need for engagement with, as well as training and sensitisation of, law enforcement. While we work towards reforming the current drug policy system in a way that supports health, dignity and human rights, steps can be taken to ensure that law enforcement officials working within existing punitive models can learn about alternatives to incarceration, such as pre-arrest diversion schemes, the harms caused by racist and xenophobic policing practices, and the importance of treating people with dignity and respect for their human rights.

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⁵⁸ Schmelzer, A., The Denver Post (7 September, 2020), ‘Call Police for a Woman Who is Changing Clothes in an Alley? A New Program in Denver Sends Mental Health Professionals Instead’

⁵⁹ Collins, S., The Vox (23 September, 2020), ‘The Financial Case For Defunding The Police’

⁶⁰ McIntyre, N., Parveen, N. & Thomas, T. (2021) Exclusion rates five times higher for black Caribbean pupils in parts of England. The Guardian, <https://www.theguardian.com/education/2021/mar/24/exclusion-rates-black-caribbean-pupils-england>.

⁶¹ IPPR (2017) Making the Difference: Breaking the Link Between School Exclusion and Social Exclusion. Available at: <https://www.ippr.org/files/2017-10/making-the-difference-report-october-2017.pdf>