

Open Society Foundations

224 West 57th Street
New York, NY 10019, USA

p. +1 212-548-0600

f. +1 212-548-4600

July 20, 2023

**Submission to the UN Committee on the Elimination of Racial
Discrimination in response to call for contributions for its First Draft
of the General Recommendation No. 37 on racial discrimination and
the right to health**

Open Society Foundations (OSF) make this submission in response to the Committee's recent call for contributions to the first draft of General Recommendation No. 37 on racial discrimination and the right to health.

We are deeply concerned that, despite the long colonial and racial roots of drug prohibition, as well as its grave human rights consequences for Indigenous Peoples, people of African descent, ethnic and racial minorities, in particular for the enjoyment of their right to health, the draft General Recommendation makes no mention of the connection between drug prohibition, racial discrimination, and the right to health.

A recent case from the United States offers glaring proof. According to the [Centers for Disease Control and Prevention](#), in 2021, Native/Indigenous Americans and Black Americans died from fentanyl overdoses at a rate nearly 30% higher than white Americans. In [2020](#), their overdose fatality rate was 27% higher than whites. **Drug criminalization clearly prevents people from seeking treatment, harm reduction services, or other social supports, because of the fear of arrest. It further exacerbates the existing inequality, stigma, and discrimination that contribute to Black and Indigenous Americans dying from drug overdose.**

We argue that drug prohibition is *inherently inconsistent* with the right to health and the obligation to eliminate racial discrimination in all its forms. **We therefore believe that the draft General Recommendation should direct States Parties along the premise that compliance with the International Convention on the Elimination of All Forms of Racial Discrimination would require them to eliminate criminal penalties for personal drug use and possession, and effectively implement an approach to drugs that is based on human rights, public health and development.** [The International Guidelines on Human Rights and Drug Policy](#) could be used as a reference tool by State Parties to ensure human rights compliance at the local, national, and international levels.

While the UN drug conventions frame drug prohibition as a global health intervention that is supposed to protect the right to health of populations, there is overwhelming evidence that it has not been effective. Despite more than fifty years of efforts focused on creating a “drug-free world,” the ultimate goal of drug prohibition, drug use persists at fairly stable levels in every country in the world. According to the UN Office on Drugs and Crime, an estimated 275 million people use drugs worldwide in 2021 and 36 million had a drug use disorder. In a hallmark 2016 report, the Lancet Commission on Public Health and International Drug Policy concluded that the public health harms of “prohibition far outweigh the benefits.” In 2019, the Working Group of Experts on People of African Descent noted, “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.”

As there is considerable evidence that drug prohibition has been a driver of structural discrimination for decades, inflicting disproportionate health harms on racialized and underprivileged communities—harms that frequently multiply and compound—States Parties have a clear obligation to take action.

Human rights institutions have traditionally accepted the framing of drug prohibition as a necessary policy for mitigating the health consequences associated with drug use, while remaining agnostic on prohibition itself and instead focused on human rights breaches perpetrated as part of its enforcement. To be sure, human rights institutions must continue to confront the excesses of drug prohibition. The General Recommendation of the Committee on racial discrimination and the right to health provides a timely and crucial opportunity to provide guidance to States Parties on their specific obligations to measure the adverse impacts of structural discrimination associated with drug prohibition and to take preventive and corrective actions to counter such racial discrimination.

We recognize that drug prohibition is deeply ingrained in many countries around the world, and that ready-made alternatives to it are seriously inadequate. This deficit is mostly due to prohibition, which forbids the establishment of such alternative and innovative models. As a result, the shift will have to be gradual. Therefore, we believe that the General Recommendation should direct States Parties to take actions to mitigate future harms from prohibition while also planning and preparing for a transition to a new approach to drugs.

RECOMMENDATIONS:

- 1. We request that the Committee include a section in the General Recommendation that elaborates on the relationship between drug prohibition, racial discrimination, and the right to health, as well as a call for State Parties to immediately decriminalize drug use and possession for personal use, in accordance with the 2018 UN System Common Position**

Supporting the Implementation of International Drug Control Policy through Effective Inter-agency Collaboration. Drug laws that criminalize drug use or possession should be amended to eliminate criminal penalties.

State Parties should also initiate an incremental, evidence-based, and participatory approach to explore regulatory models for different types of drugs, beginning with lower-potency substances. Countries should maximize development opportunities offered by regulated drug markets and ensure that communities most affected by prohibition benefit from the process.

2. We also propose that **the General Recommendation direct States Parties to engage Indigenous Peoples and other groups that use controlled substances in traditional medical, spiritual, and cultural practices to assess the impact of the drug prohibition** on communities and identify steps to allow such practices to resume.
3. Similarly, we believe **the General Recommendation should direct State Parties to ensure that communities that develop traditional medical and spiritual practices involving these substances are adequately compensated when their traditional knowledge and practices are appropriated for commercial use by pharmaceutical and other industries.**

Addressing racial discrimination in the enjoyment of the right to health demands a shift away from drug prohibition and towards drug policies anchored in human rights, public health, and development. Without which, drug prohibition will continue to undermine the ambition of ending racial discrimination in the context of the right to health.



Kasia Malinowska-Sempruch, Dr. PH
Director, Drug Policy at Global Programs