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Submission to the UN International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

Introduction

This is a joint-submission from the Drug Policy Program and Latin America & Caribbean Program of the Open Society Foundations (OSF) in response to the UN Independent Expert on Racial Justice and Equality in Law Enforcement's recent request for input for their forthcoming report on "Reimagining Policing".

In this submission we argue that **drug prohibition and racist and abusive policing are inextricably intertwined and contribute to systemic racism in law enforcement policies and practices**. We believe that dismantling the drug prohibitionist regime and ending racist policing is complementary and mutually reinforcing.

This submission is structured as follows: *First*, we provide background on OSF's involvement with drug policy and efforts on countering racist policing particularly in Latin America. *Secondly*, we describe key linkages between drug prohibition, racist policing and coloniality. *Finally*, we address some of the Independent Expert's questions and make specific recommendations for its study report. We will highlight promising initiatives and positive or good practices on prevention and accountability measures for human rights violations committed by law enforcement.

Open Society's involvement in drug policy and countering racist policing in Latin America

The Open Society Foundations, founded by George Soros, are the world's largest private funder of independent groups working for justice, democratic governance, and human rights. The foundations provide thousands of grants annually through a network of national and regional foundations and offices, funding various projects across the globe. This submission is based on experiences accumulated over thirty years of supporting organizations worldwide that document the harms of drug prohibition, including police abuse and human rights violations in criminal legal system in the name of the war on drugs, develop and implement activities to mitigate this issue, and advocate for new policing practices based on human rights, accountable criminal justice systems, and the amplification of popular participation in the creation, implementation, and oversight of policies.

The present submission also draws on the work of several Open Society's partners working in Latin America to advocate for a renewed, decolonial perspective on policing that centers on the connections between coloniality, racism, state violence, and drug prohibition in Western societies. Additionally, this submission privileges the expertise and experiences of organizations from the

Global South led by those directly affected by policing norms and practices. Listening to grassroots movements and affected communities is fundamental to decolonizing global hierarchies of knowledge and expertise and to re-imagining policing in an antiracist, decolonizing fashion.

OSF began funding organizations working on drug policy issues in the 1990s because it recognized that drug prohibition was fundamentally at odds with key open society principles such as justice, democratic governance, human rights, sustainable development, transparency, accountability, and participation. An open society approach to tackling a public health and social challenge like drug use, transit, and supply would rely on evidence-based health and social interventions, sustained development assistance, engagement and empowerment of affected communities, de-stigmatization of these communities, and respect for human rights. By contrast, drug prohibition seeks to solve this challenge through criminalization of affected populations, racist and punitive heavy-handed law enforcement interventions, militarized interdiction, coercive eradication, and stigmatization.

Through decades of work in this field, we have seen over and over again how drug prohibition tends to go hand-in-hand with authoritarian tendencies, to disproportionately affect or target ethnic and racial minority populations, and to involve the unaccountable expenditure of huge amounts of public funds on mostly ineffective drug control measures. While OSF and others' support for the drug policy field has resulted in a much greater understanding of the harms of prohibition-based drug policies and the development of numerous innovative, community-based, and anti-racist interventions to mitigate these harms, the institution of drug prohibition itself has undergone relatively little change.

Drug prohibitionist and racist policing

The official rationale for drug prohibition, as expressed in the preamble of the 1961 UN Single Convention on Narcotic Drugs, is a concern for the “health and welfare of mankind” due to the “serious evil” that “addiction to narcotic drugs constitutes...for the individual” and the “social and economic danger” that it poses to mankind.¹ In theory, the UN drug conventions are colorblind and should be applied without any distinction as to race, color, economic status, or national or ethnic origin. However, **examination of both the origins of prohibition and sixty years of its application in practice shows that drug prohibition is, in fact, inextricably linked at its roots with racial discrimination and is disproportionately harmful in its impacts on racialized and other marginalized populations, manifested in its racist and punitive enforcements.**

The colonial and racist roots of prohibition continue to be an inescapable part of the enforcement and impact of drug prohibition, even at a time when explicit racial bias is no longer socially acceptable. In Western societies, policing has been directly influenced by practices, discourses, and technologies of racial control forged during the experience of colonialization². In countries such as Brazil, the United States³ and Canada⁴, former colonial powers maintained *quasi*-police forces to impose power hierarchies based on racial difference. The colonial ‘language of pure violence⁵’ was regularly employed against Indigenous populations and enslaved people throughout European colonial and imperial endeavors to achieve this goal. Rather than belonging to an ancient past, racist

ethos and practices remained in police institutions and is nurtured until the present days, as global examples of racist police abuse attest.

Drug prohibitionist policies gained breadth based on these same foundations. Different psychoactive substances, currently labeled as 'drugs', have been used for centuries as part of religious and cultural traits of Indigenous populations: coca-leaf chewing in the Andes; khat in the Arabian Peninsula and in North and East Africa; opium in China and other Asian communities⁶. Similarly, Afro-Diasporic communities used marijuana in religious rituals during colonialism and the slavery regime in Latin America. With the end of colonialism, the criminalization of cultural and religious practices, such as the use of psychoactive substances, emerged as a technique for social and racial control⁷. In many postcolonial societies, drug prohibition was enforced by police forces, effectively maintaining coloniality and racism in the abolition's aftermath through policing and criminalization⁸.

In the United States, police militarization and drug securitization increased interconnectedly. The Drug Policy Alliance claims that the expansion of militaristic training and weaponry in the United States, which began before the emergence of the War on Drugs, has been deepened with the introduction of harsh prohibitionist laws⁹. In turn, police militarization reinforced the securitized approach to 'drugs' and the endurance of a racialized enemy. Both served to the continuance of police brutality against racialized groups (amongst other effects) and the creation of the largest imprisonment population in the world composed mainly of Afro-Americans and Latinos¹⁰.

In Latin America, drug prohibitionist policies existed in countries such as Brazil, Colombia, and Mexico before the international prohibitionist regime, but with its establishment, drug policies became harsher, and police militarization was fortified with U.S. resources¹¹. Across the region, Indigenous and Afro-Diasporic populations are the most impacted by the securitization of drugs and police militarization¹². In Brazil, police forces deploy daily militarized raids in *favelas*, communities where poor and racialized populations are the majority, resulting in an indiscriminate use of force and human rights violations¹³. In Colombia, Afro-Colombian territories are disproportionately affected by forced crop eradication policies, that degrades communities' health and environmental conditions and force internal displacement¹⁴. In Mexico, the gradual escalation of drug wars led to unprecedented levels of homicides and forced disappearances and have served as justification for an increase in the militarization of different aspects of civil life.

Drug prohibitionist and racist policing also pushed the creation of paramilitary or militia organizations in which reserved or active-duty members of armed and police forces form. The militaristic mentality informs these groups, which sees drug trafficking groups as a threat to society and law enforcement as limited by juridical constrictions, leading to the importance of 'law enforcement' outside usual boundaries. The Memory and Racial Justice Defense Institute (*Instituto de Defesa à Memória e Justiça Racial*) claims that given the know-how that these paramilitary and militia groups possess in criminal investigation, forced disappearances are usual in the areas that these organizations control.¹⁵ Leading to a decrease in homicide reports, because victims' bodies are not found, and the cases are thought of as disappearances, a strategy that surpasses policing practices such as criminal mapping.

Promising initiatives

Given this context, OSF has been funding promising initiatives to prevent police violence and abuse from an anti-racist and decolonial perspective, to also help dismantle the drug prohibitionist regime. In this submission, we highlight positive or good practices in three main areas: (1) unraveling systematic racism beyond individual cases; (2) supporting youth-led, community-based solutions and leveraging grassroots expertise; and (3) fostering popular participation and civil oversight of police forces.

- (1) Unraveling systematic racism beyond individual cases:** in Brazil and in Colombia, civil society organizations such as the Center for Studies on Public Security and Citizenship (CESeC) and Ilex Acción Jurídica have conducted research that demonstrate how policing practices in both countries are systemically based on racial profiling¹⁶¹⁷. In Mexico, the Indigenous Professional Center for Advice, Defense, and Translation (CEPIADET) promotes the rights of Indigenous communities by providing training to Indigenous interpreters working in the criminal justice system and by strengthening the internal legal systems of the indigenous population of Oaxaca.
- (2) Supporting community-based solutions and leveraging grassroots expertise:** in the *favelas* of Rio de Janeiro, Brazil, youth-led organizations such as LabJaca, Movimentos, and Coletivo Papo Reto mobilize the local youth to conduct research and advocacy on policing practices affecting their realities. In Colombia, Afro-Colombian organizations such as Rostros Urbanos, Corpocurrulao, and Eleggua, based in the cities of Buenaventura and Cali, promote local solutions to state violence by mobilizing the local youth through artistic and communication activities.
- (3) Fostering civil oversight demanding accountability:** in Colombia, youth-led civil society organization Temblores is leading a national effort to reform police institutions and practices, as a result to the violent repression suffered by social movements during the massive protests of 2021. In Brazil, a coalition of civil society organizations from Rio de Janeiro submitted a petition to the Federal Supreme Court calling for the recognition of the many human rights violations committed by police forces in the *favelas*, as well as for the implementation of concrete measures to reduce lethality and provide justice for the victims¹⁸.

The expertise and experiences developed by grassroots and community-based organizations, particularly those based in Global South countries, are crucial to any effort towards re-imagining police institutions and practices. Across the region, governments employed policing practices, discourses, and technologies that stem from Global North academic circles and institutional interests^{19 20}. As history shows, these policies mostly ignored colonial, imperial, racial, and security contexts, serving as a one-size-fits-all approach which resulted in the militarization of police forces and the consolidation of racial profiling as an institutional practice.

By giving centrality to the expertise and experiences of Global South partners in this submission, we aim at demonstrating the importance of subverting the roles

played by coloniality and racism in the design, monitoring, and evaluation of policing institutions and practices, a form of global racial hierarchy that regularly functions unnoticed. This is as crucial as police abuse, for solutions and alternatives to the latter are circumscribed solely to people outside affected communities. In this sense, we suggest that listening to grassroots movements and affect communities is fundamental to re-imagining policing in an antiracist fashion and decolonizing hierarchies of knowledge and expertise.

The wheel does not necessarily need to be reinvented; it has already been for decades. It just needs to be noticed and used by policy and decision-makers. Based on the above, we propose the following key recommendations to the Independent Expert:

- Address systemic racism in law enforcement from an intersectional approach that connects coloniality, racism, policing, and drug prohibition.
- Leverage the expertise and experience of affected communities, particularly in and from the Global South.
- Assure civil, popular, and democratic oversight of police activities.

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¹ United Nations, 1961 Single Convention on Narcotic Drugs. Available at: https://www.incb.org/incb/en/narcotic-drugs/1961_Convention.html (accessed June 9, 2022).

² Lou Pingeot & Colleen Bell (2022). Recentring the coloniality of global policing. *Third World Quarterly*, 43:10, 2488-2508, DOI: 10.1080/01436597.2022.2102475.

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⁶ Koram, J. *The War on Drugs and the Global Colour Line*. London: Pluto Press, 2019.

⁷ Id.

⁸ Id.

⁹ Available at: https://drugpolicy.org/sites/default/files/1033_factsheet.pdf. Last access: 17/04/2023.

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- ¹⁸ Available at: <https://www.conectas.org/en/noticias/adpf-favelas-case-understand-in-5-points-the-case-in-the-supreme-court-to-reduce-police-lethality-in-rio-de-janeiro/>. Last access: 26/04/2023.
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