

Mandates of the Working Group of Experts on People of African Descent; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the independence of judges and lawyers; the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Special Rapporteur on minority issues; the Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL USA 13/2020

8 June 2020

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the independence of judges and lawyers; Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Special Rapporteur on minority issues; Independent Expert on the enjoyment of all human rights by older persons; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/23, 42/22, 35/6, 35/15, 34/18, 41/12, 36/15, 42/16, 34/9, 35/11, 42/9, 34/6, 42/12, 35/19, 34/35, 41/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning several recent killings of people of African descent through excessive use of force by ordinary citizens and security

personnel in law enforcement operations. Furthermore, we have received information regarding State-endorsed measures taken in response to subsequent protests and riots across various cities in the United States of America which raise alarm including allegations of arbitrary arrests and detention, intimidation and harassment of journalists and protesters and further police brutality.

The situation of people of African descent in the USA and the disproportionate impact of COVID-19, inter alia due to a long history of systemic racial discrimination, including in access to the right to health, was raised in a previous communication (AL USA 10/2020).

According to the information received:

In 2020, three widely reported killings of people of Africa descent have motivated calls for accountability and catalyzed public protest. Some outlets refer to this moment as the “Fed Up-rising,” referencing the backdrop of ongoing persecution and lack of social protection for people of African descent in the United States. There is some similarity in these incidents to previous police-related deaths and deaths of people of African descent in quasi-policing contexts by citizens who self-deputized or were deputized under applicable law or ordinance to “police” Black bodies and who were acquitted or exonerated on the basis of their affiliation with law enforcement purpose, even though they were not law enforcement. These include the killings of Trayvon Martin, Tamir Rice, Botham Jean, Michael Brown, Sandra Bland, Eric Garner, Philando Castile, Alton Sterling, Terence Crutcher, and others who have been the subject of prior allegation letters and Special Procedures reporting. In the cases of Ahmaud Arbery, Breonna Taylor, and George Floyd, discussed further below, the question arises of whether and how much enforcement of the law in the United States currently tolerates or facilitates racial terror. In this regard, the context of America’s self-described “original sin” of slavery, an ongoing context of racial discrimination that is particularly notable and well-documented with respect to people of African descent, and the complex history of pervasive racial terror lynching that has been, at times, licensed by American law, are particularly relevant. In addition, these incidents, and associated public protest, arise precisely ninety-nine years after the Tulsa massacre, in which white mobs killed and burned African-Americans and their businesses, licensed by and assisted by law enforcement, in a location famously known as “Black Wall Street.” Given the allegations below, a second question exists as to the adequacy of currently available accountability mechanisms to effectively redress and to deter police brutality and other racialized misconduct.

Ahmaud Arbery

On February 23, 2020, twenty-five year old, Ahmaud Arbery was shot and killed as he went jogging in South Georgia by three armed white men. These men, acting in concert, followed him for several minutes and eventually chased him

down. One of the men filmed the interaction while the others stopped Mr. Arbery, drew their rifles, and eventually shot and killed him. The killers allegedly claimed that Mr. Arbery fit the description of a suspected burglar in the area and that the killing was an act of self-defense. However, there had been no reported break-ins or burglaries in the area.

Despite numerous conflicts of interest, local authorities initially investigated the matter and decided not to raise criminal charges against any of the men involved in Mr. Arbery's death. It was only after the video of his killing was released two months later that public outcry led to a re-evaluation and, ultimately, the criminal prosecution of the three men who killed Mr. Arbery. There have been claims that the white killers' investigation and confrontation of Mr. Arbery had been authorized and instigated by the police, or the residents of the neighborhood, or both. Two prosecutors on the case recused themselves due to conflicts of interest, one with a detailed letter setting forth putative bases for exoneration of the three killers. Despite the arrests of the three men involved in the killing of Mr. Arbery in May 2020, the delays and the role of public demand in these steps raises questions about the integrity of the prosecution and the commitment to accountability and justice.

Sworn testimony at the preliminary hearings in the case on June 4, 2020 have offered additional detail. According to an eyewitness, the killers of Ahmaud Arbery formed up, gave elaborate chase, cornered him and did not allow Ahmaud to escape the neighborhood, rammed him with their truck, eventually shot him three times. Then, according to testimony, one of them stood over his dead body, and called him a "f***ing n***er." The last few moments of Ahmaud's life involved pursuit by a lynching party identical to the lynching parties of the Jim Crow era.

Breonna Taylor

Ms. Taylor was a twenty-six year old, emergency medical technician (EMT) when she was killed. On March 13, 2020, Ms. Taylor was sleeping in her home when a SWAT-like team of police entered her home, pursuant to a warrant and shot her eight times. Reportedly, the police did not seek permission to enter, did not announce or identify themselves, or give notice to Ms. Taylor before bursting into her home. Ms. Taylor's boyfriend's call to 911 after the incident indicated his continued unawareness that this was a police sanctioned action. His statements on the 911 call, "Someone broke into our house and shot my girlfriend," suggested that even after the incident, the police may have failed to identify themselves or their purpose for being in Ms. Taylor's home.

According to information received, Ms. Taylor was not the actual target of the police action, nor was the raid supposed to have taken place in her house. The police entered the wrong house and a botched raid ended in the death of Ms.

Taylor. Her case resembles the case of Aiyana Stanley-Jones, a ten-year-old child killed in Detroit in 2010 while sleeping in the course of a botched police raid – and where all charges were dropped against the officer four years later. In this case, even after their mistake, the police attempted to suggest impropriety on the part of Ms. Taylor or her boyfriend, sought to associate them with criminal conduct, and initially claimed they had announced their presence, although evidence suggests otherwise. Ms. Taylor’s boyfriend, Kenneth Walker, was a licensed gun owner who kept firearms in their home for protection, which is allowed under U.S. law. He withdrew his pistol at the time of the raid and one officer was shot in the leg, possibly by him. He was ultimately arrested by the police and charged with attempted murder of a police officer, the only arrest that has been made in connection with Ms. Taylor’s death thus far.

George Floyd

Mr. Floyd was forty-six years old. On May 28, 2020, Mr. Floyd was killed by police officers in the state of Minnesota. Police officers claim to have approached him in response to a 911 call alleging forgery or the use of counterfeit currency. There are two widely shared videos of the police encounter that have gone viral. The first video that gained attention from the public depicts a team of four police officers pinning Mr. Floyd down, one of whom is kneeling on the neck of Mr. Floyd for over eight minutes. During this time, he is laying on the ground, asking for help, asking for water, and indicating that he cannot breathe and his belief that he is dying. The officer continued to kneel with his knee on Mr. Floyd’s neck until he eventually died. In another video, which takes place earlier, Mr. Floyd is detained and in the police vehicle, being assaulted by officers. These officers are then depicted kneeling on various parts of Mr. Floyd’s body while he is on the ground with a police officer kneeling on his neck.

During this time, witnesses begged officers to take Mr. Floyd’s pulse more than sixteen times. One woman, witnessing the event, identified herself as a firefighter and EMT and begged the officers to take his pulse numerous times. When she attempted to render medical attention to George Floyd herself, she was ordered by the police to get back on the sidewalk, effectively denying George Floyd medical attention. The officer kneeling on George Floyd’s neck, kept his knee on his neck for four minutes and one second *after* his body went limp and he lost consciousness, including for one minute after the ambulance arrived. None of the four officers attempted to perform CPR or any other life-saving measure, again effectively denying him the medical attention that they were presumably required by law to render during medical emergencies.

The four police officers involved were dismissed from the jurisdiction’s police force shortly after Mr. Floyd was killed, and one of them has been arrested and charged with murder in the second degree. The other three officers have been charged with aiding and abetting. From the video footage, it appears that the other

officers stood by and failed to intervene against the use of excessive force and the abuse of authority. Some video shows some of them also kneeling on different parts of Mr. Floyd's body in the course of his detention. All were present when Mr. Floyd ultimately died with a police officer kneeling on his neck. After the death of Mr. Floyd, an unusually rapid public autopsy result from the medical examiner suggested asphyxiation was not the cause of death. This finding was later brought into question by a private autopsy conducted by the family of Mr. Floyd, which indicated the opposite.

Ongoing Protests of Law Enforcement Impunity, and Violence against Protesters

The death of Mr. Floyd sparked a countrywide wave of public protests against police brutality, law enforcement impunity, and the ongoing infliction of racial terror on people of African descent in the United States, including but not limited to the events discussed herein. In managing these assemblies, law enforcement authorities have used unprovoked or disproportionate force against protesters and detained protesters. Several of these incidents are circulating. Examples include that of an adolescent boy of African descent being pepper sprayed while standing immobile after being stopped by the police, with his hands raised in the air; video of police vehicles driving headlong into crowds of protestors; video of police officers affirmatively assaulting, pushing to the ground, and shooting at protesters, and more.

Restrictions to the Freedom of the Press and the Ability of the Press to Report News

In the protests that have ensued in the wake of these killings, police violence and misconduct has also appeared to turn toward the press seeking to transmit information to the public. On live television, Omar Jimenez, a reporter of color, was arrested for allegedly failing to relocate at the instruction of police, a charge he denied on the air, while white reporters were left unmolested. Although identified as press, several journalists and photojournalists have reported being shot, often in the face, with rubber-tipped bullets and at least one woman has lost an eye to the police response to public protest. In the first two days of public protest at these police killings, over fifty incidents of violence or harassment of media workers was reported.

Racial Discrimination and Abuse of Authority in COVID-19 Enforcement of Physical Distancing

In many cities in the United States, these incidents are set in the context of the COVID-19 pandemic. Reportedly, communities of people of African descent have already been in crisis for months due to the current pandemic and the ways in which State power, including policing, have failed to offer social protection or to protect human rights. People of African descent live more frequently in inadequate or overcrowded housing and they are also overrepresented among

persons in situation of homelessness. Their housing situation exposes them more likely to COVID-19 and is as well contributing to the discrimination and social exclusion that has contributed to the protests. The stress of COVID-19 in communities of African descent has been exacerbated by reported excessive force and abuse of authority directed specifically at people of African descent by police claiming to enforce COVID-19 physical distancing, the use of masks, and other requirements. Police have allegedly used their discretion to stop, arrest, and otherwise enforce physical distancing requirements disproportionately against African-Americans in some cities in the United States, contributing to fractured trust and poor community relations.

In addition, the racial disparities of COVID-19, and their connection to widely understood social and underlying determinants of health, have reportedly added stress and uncertainty for people of African descent. Thus, popular protest in the United States appear to come after weeks of navigating the COVID-19 pandemic, which has reportedly killed over 100,000 people in the United States and which has disproportionately impacted people of African descent. In the United States, the COVID-19 pandemic allegedly involved disproportionate risk of infection for people in African descent for several reported reasons, including (1) their overrepresentation among designated “essential workers” in the United States, including home health aides, nursing home personnel, delivery personnel, grocery workers, and others helping to maintain the quarantine, (2) their increased risk of infection due to dense living condition, disproportionate representation in hotspots, and inability to fully quarantine, among other things, and (3) lack of access to adequate health care and overreliance on overcrowded and under-resourced public hospitals.

By some estimates, people of African descent reportedly died of COVID-19 at triple the rate of white Americans. Black deaths from COVID-19 related causes were allegedly double that of their representation in the U.S. population. Skyrocketing unemployment and a lack of State action to provide a safety net for people navigating economic uncertainty due to the pandemic, other than a one-time cash disbursement to some Americans, has reportedly created added insecurity and instability disproportionately among people of African descent in the U.S.

Apparent Lack of Compliance with International Law and Human Rights Treaties

While we do not wish to prejudge the accuracy of the information received, we wish to express our utmost concern at the above-mentioned allegations which, if confirmed, would be in contravention of international human rights law binding on the United States. In particular, we wish to highlight the duty of all branches and levels of government to respect and ensure the right of life, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person and not to be subjected to arbitrary detention, the right to equality and non-discrimination, the right of peaceful assembly, the right to freedom of

expression, including the freedom of the press to report on events without intimidation or harassment, and the right to effective remedies, including the duty to conduct effective investigations into alleged human rights violations with a view to prosecute and punish those responsible.

In this regard, we particularly emphasise the duty on the part of the State, to conduct prompt, effective, impartial and independent comprehensive investigations into all alleged human rights violations committed by law enforcement authorities in the context of the abovementioned deaths, in the policing of the wave of protests currently unfolding, as well as in the alleged discriminatory enforcement of implemented COVID-19 measures. In accordance with international human rights law, the State must ensure that these investigations are implemented with a view of prosecuting and punishing those responsible for the violation. In the context of the death of Mr. Floyd, such investigations must include the possible criminal liability of all those involved in his arrest.

These allegations should be viewed in the context of the history of systemic discrimination and racial bias faced by African Americans in the United States, see further below. We therefore reiterate the need for accountability for killings of African Americans and action to address racial bias faced by African-Americans within the justice system.

History of Lynching and State Involvement in Racial Terror

The incidents in this allegation letter have been described as examples of modern-day lynchings. In Ahmaud Arbery's case, a lynching party formed up, hunted and cornered Ahmaud, hit him with the truck they were driving, shot him three times, and stood over his dead body and called him a racial epithet. In George Floyd's case, a broad daylight police killing could not even be interrupted by witnesses who had medical training to ensure the blatant violation of his human rights did not result in death. In Breonna Taylor's case, details continue to emerge that the police who killed her operated pursuant to a warrant for a person they already had in custody and who lived far from her home and that the police tactical team proceeded anyway.

The historical context of slavery, Jim Crow laws, and lynching continue to drive racial discrimination against people of African descent in the United States. The origins of American policing in the "slave patrols" or "patter rollers" of the eighteenth and nineteenth centuries continue to influence policing today. The Working Group of Experts on People of African Descent has expressed its concern at the racial discrimination that endangers the lives of people of African descent in the United States, including through carceral state apparatuses. After its 2016 country visit to the United States, the Working Group reported on the climate of racial terror in which people of African descent were continually destabilized by the risk of arbitrary violence, up to and including death, and the expectation, grounded in history, that no accountability would be sought or achieved within the justice system without a massive mobilization of public demand and public outrage. Even where individual instances of police brutality or institutionalized racism were addressed, these individual efforts did little to shift the ongoing culture of violence

and impunity that fuels and protects State violence, including racial terror lynching, against people of African descent.

These incidents, together and individually, recall the complex history of racial terror lynching in the United States. Throughout its history, and most particularly after the period of enslavement, white supremacist concerns at maintaining racial control manifest in various ways to create racial terror. Lynching, killings grounded in racial terror, were characterized by community support and the lack of accountability for their perpetrators. These have been called “acts of terrorism,” carried out with impunity, sometimes in broad daylight, often in plain view of law enforcement and judicial authorities, if not with their involvement. Over 4,000 lynchings were associated with this period in American history, including in Georgia, where Ahmaud Arbery was killed, and Kentucky, where Breonna Taylor was killed.

The lack of accountability for this misconduct, even today, normalized racial terror as a form of collective punishment and a social control tactic against which people of African descent were required to be ever-vigilant. Even today, in many communities associated with racial terror lynching, architects of racial subordination and political leaders known for commitments to white supremacy are memorialized while histories of racial terror are whitewashed. The role of the medical examiner in rapidly offering a self-exonerating analysis for the state, immediately questioned by other credible experts, is not distinct from this. Racial terror lynchings in the United States declined only as the use of capital punishment increased; the recent relative decline of capital punishment in the United States, as well as widespread recognition that mass incarceration has functioned as a system of racial surveillance and control amid calls for criminal justice reform, may play a role in the three above mentioned incidents.

The incidents set forth in this allegation letter also have been described as occurring within the ambit of legitimate law enforcement or with the implicit approval of law enforcement authorities. Even the incidents that have not occurred at the hands of police claim the authorization to self-deputize under colour of law. This is another aspect of United States’ law that has been deployed as a tool to further racial hierarchy and social control. Laws like the “fleeing felon” rule authorize the use of force – and in some cases the use of deadly force – against someone believed to be fleeing the scene of a serious crime. At the same time, in many states, laws have been drafted in such a way as to define a significant amount of non-life-threatening conduct as felonious. In the end, many killings of people of African descent, including those named in this allegation letter, have at their root the State’s defense of property. This is a particularly challenging truth in light of the fact that the State once considered people of African descent themselves to be property and that the legacy mindsets of this period continue to be evident in practice and policy. Notably, each time someone is killed there is an immediate claim, often discredited, that they were in the midst of committing a crime suggests that the use of law as a pretext for racial terror is a well-ingrained strategy in the American mindset and particular vigilance is required to ensure such strategies are prohibited and abandoned. In this regard, we reiterate the observations of the Working Group of experts on people of African descent in its US country report in 2016, that “[k]illings of unarmed

African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system.”

Deliberate Indifference of the U.S. Administration

Thus far, the public response by your Excellency’s Government to protests and calls for accountability has not recognized this history, the ongoing climate of racial terror, or the history of lynching being played out in the current context. We express our grave concern that your Excellency’s Government has not empathised with beleaguered communities nor concern at the racialized killing of people of African descent in contravention of their human rights and civil rights. The United States’ government response also stands in stark contrast to its calls for local officials to “give a little and put out the fire” in response to protests at COVID-19 pandemic restrictions held by white Americans. We also express serious concern at the State response, its use of threats and acts of violence against protesters, and threats to unleash dogs on protestors, in a conscious or unconscious racial dog whistle to tactics used by Southern police against civil rights protesters in the 1960s, and stating, “when the looting starts, the shooting starts.” This public statement was considered so incendiary that the Twitter platform flagged it as glorification of violence. Since these statements, the U.S. government has called for the indiscriminate quelling of social protest and the imprisonment of protesters, announced its intention to deploy the military to control social protest, called for the designation of an anti-fascist umbrella organization as a terrorist organization, enacted curfews and then tear-gassed protesters in advance of the curfew. In addition, the U.S. president conducted tactical combat operations against American citizens usually reserved for war, including a “show of force” involving a low-altitude helicopter fly-by that weaponizes debris and dirt against bystanders on the ground.

In addition, rollbacks of policing reform measures and commitments in recent years leaves key gaps in mechanisms to ensure accountability, to promote reforms, and to build trust in impacted communities. These deficiencies create a crisis of legitimacy in policing that the State has fed in recent years. For example, in the last three years, the Department of Justice has faced new limits on the scope of its ability to direct reform in police departments found to have engaged in serious violations of human rights and civil rights, including reduction of the available tools to procure reform under consent decrees and via lawsuits, requirements to end federal oversight of police departments violating human rights significantly earlier, and fewer guarantees of substantial compliance with the law or accountability for misconduct of police personnel. Law requiring police to collect and publicly report data on police shootings has been ignored and deferred, the collaborative reform program has been redirected away from the systemic policing failures that were its intended focus, and oversight of the transfer of military weapons to police for local law enforcement has been eliminated.

U.S. Administration personnel have reaffirmed their commitment to, and enacted through legislation, mass incarceration tactics that have been shown to facilitate massive racial disparities in arrest and incarceration, including a resurgence of the War on Drugs, although it was never shown to effectively limit narcotics use, sale, or trafficking of

narcotics. The U.S. Administration has also called for a resurgence of mass civil forfeitures. The twenty-first century policing reforms enacted by the previous presidential administration have been entirely abandoned. These rollbacks of policing accountability and reform mechanisms suggest that reform – even for serious violators – is largely voluntary. This presents serious protection concerns that are evident already in the allegations set forth herein.

Notably, the use of force, by law enforcement, or in furtherance of the law, should minimize the risk of injury to all persons involved at all times. Force or lethal force should never be used as a pretext to for racial harassment or racial terror. Data on the use of force should be maintained and data disaggregated by race should be analysed to determine whether the use of force disproportionately affects people of African descent, in either frequency or severity. Racial discrimination in this arena is particularly untenable.

Ongoing Protests, Law Enforcement Impunity, and Violence against Protesters

These concerns are particularly relevant in the context of ongoing public protests against police brutality, law enforcement impunity, and the ongoing infliction of racial terror on people of African descent in the United States, including but not limited to the events discussed herein. Widely reported violence and arbitrary detention of protestors has included videos of an adolescent boy of African descent being pepper sprayed while standing immobile after being stopped by the police, with his hands raised in the air; video of police vehicles driving headlong into crowds of protestors; video of police officers affirmatively assaulting, pushing to the ground, and shooting at protestors, and more. We express particular concern that the response by authorities to the ongoing protests reflect a lack regard for international human rights law, a matter previously raised by both Committee on the Elimination of Racial Discrimination, the Working Group of Experts on People of African Descent, as well as other human rights monitoring bodies. In this regard, we reiterate the fundamental nature of the right to life, the right to security of persons and the right of peaceful assembly, which restrain the permissibility of the use of force and firearms against individuals, including protestors. We further reiterate that the right to liberty and the guarantees arbitrary detention applicable to law enforcement authorities detaining individuals protesting police misconduct and racial terror.

In part, the protests reflect at the impunity with which this law enforcement and quasi-law enforcement misconduct continues. The officers involved in the death of George Floyd had 24 prior complaints for police misconduct, including complaints for unauthorized shooting and excessive force, but had never faced serious discipline. At the time of his firing, the officer who kneeled on George Floyd's neck reportedly had 16 complaints still pending. The tactics used by the police, including kneeling on necks and chokeholds and proactive use of pepper spray, are not aligned with international law or human rights. Yet, no apparent repercussions for police misconduct or impunity have occurred absent serious and sustained public demand, suggesting these systems do not

operate, in themselves, as social protection of human rights of the communities they claim to serve.

The Working Group and the Special Rapporteurs note with particular concern the presidential proclamation pursuant to the 1807 Insurrection Act on 1 June 2020, wherein the U.S. president threatened martial law and military action to quell social protest. As designed, the Insurrection Act is meant to be invoked at the request of a state, to enforce federal law, or to protect civil rights, and it has been used in service to enforcing federal mandates like school desegregation. Nevertheless, the Insurrection Act has been most recently, and exclusively, used against people of African descent and this cannot be ignored in invoking this authority, particularly in the absence of an explicit request by any state of the United States. Most recently, this Act was invoked during the protests about police brutality toward Rodney King in Los Angeles and in response to post-hurricane foraging by people of African descent in the Caribbean. The nearly simultaneous decisions to tear-gas peaceful protesters not in violation of any law or curfew raises additional concerns and shows little regard or compassion for the pain and despair being expressed by people of African descent in the United States at this time.

The historical context of federal intervention in the United States is particularly relevant to this analysis, as similar actions have not been taken where people of African descent were subject to violence, destruction of property, and looting, suggesting a double standard that implicitly upholds racial inequality and discrimination. This allegation letter issues precisely 99 years after the looting and destruction of “Black Wall Street” in Tulsa, Oklahoma and in the wake of the “red summer” two years prior that involved riots and looting against African Americans in In the summer of 1919, race riots would break out in Washington, D.C, Tennessee, Texas, Arkansas, Nebraska and, sustained over the course of eight days, Chicago. These race-related uprisings did not inspire federal protection, despite massive financial and personal losses.

Existing Recommendations of the Working Group of Experts on People of African Descent

The Working Group of Experts on People of African Descent has already issued recommendations relevant to this allegation letter after its 2016 country visit in its report to the UN Human Rights Council. At that time, the Working Group identified some barriers to tackling impunity for killings by the police as: (a) the lack of independence of the initial investigations, which in the majority of cases are conducted by the same police department that the alleged perpetrator is a member of; (b) the wide discretion of prosecutors to determine when and how to present charges; and (c) the fact that some federal, state and county practices are not in line with international standards as regards the use of force. At that time, the Working Group expressed concern about the lack of an official and reliable national system to track killings and excessive use of force committed by law enforcement officials while on duty, and reiterates that concern as the laws put in place to track police killings have been effectively abandoned in the last three years. The Working Group is deeply concerned about the low number of cases in which police officers have been held accountable and that the federal, state and county

regulations do not align with international standards on the use of force and firearms are some of the main barriers to police accountability.

In its 2016 country visit to the U.S., the Working Group identified racial profiling is a rampant practice seriously damaging the trust between African Americans and law enforcement officials. The Working Group also encouraged the U.S. to elaborate a national action plan to fully implement the International Convention on the Elimination of All Forms of Racial Discrimination and comprehensively address racism affecting African Americans, including via legislation at the federal level. At the time, the Working Group recommended urgent action to ensure accountability for police violence against African Americans by improving the reporting of violations involving the excessive use of force and extrajudicial killings by the police, by ensuring that reported cases of excessive use of force are independently investigated, by ensuring that alleged perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions, by ensuring that investigations are re-opened when new evidence becomes available, and by ensuring that victims or their families are provided with remedies. The Working Group also called for implementation of the recommendations in the 2015 final report of the President's Task Force on 21st Century Policing. In 2016, the Working Group also issued the recommendation that the U.S. greatly increase its efforts to prevent excessive use of force by law enforcement officials by ensuring compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Since its country visit, none of this has come to pass and the United States remains unaligned with key aspects of international law and cooperation.

Additional Recommendations Based on the Events Alleged Herein

In addition, updated recommendations arise in the context of the current allegations, and an Urgent Appeal made by representatives of those named herein. Given the long history of these types of misconduct, additional actions are required to protect the human rights and guarantee social protection. These include:

- (1) pursuit of justice and accountability including charging and pursuing prosecutions of police misconduct rigorously, vigorously, and to the full extent of the law;
- (2) ending qualified immunity, which allows police to commit misconduct with impunity as there is a high bar for individuals to enforce their rights through a private right of action;
- (3) end provision of military equipment to, and military-type training of police;
- (4) mandate the use of body cameras for all police officers and the immediate release of video footage and audio recordings following incidents involving police killings;
- (5) reinstate federal oversight/consent decrees where warranted;
- (6) establish civilian review boards to aid in the pursuit of justice for victims, with adequate funding and resources tied to a percentage of the police department budget in the relevant jurisdiction;
- (7) mandate training on de-escalation techniques;

- (8) support an Independent prosecutor for police misconduct cases;
- (9) restrict no-knock warrant and use of non-uniformed police in citizen interactions; and
- (10) establish an independent commission to review, investigate, prosecute and conduct independent autopsies in all police extrajudicial killings.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on what measures the Government of the United States of America adopted, or intends to adopt and implement in order to ensure accountability for police misconduct, including fatalities, for racial disparities and racial discrimination policing including violence, and particularly for apparent acts of racial terror lynching in modern form. Please explain how these measures are compatible with the USA's international human rights obligations.
3. Please explain for each allegation what mechanisms will ensure accountability for the victims, their families, and their communities, what protection mechanisms will prevent such misconduct in the future. Specifically, what measures will be taken to protect at all times the sanctity of the home, human dignity, and to minimize risk of harm, and even death, for people of African descent.
4. Please provide information on what measures the United States will take to allow experts to conduct country visits to assess the human rights situation therein. It is our understanding no mandate-holder has been allowed to visit the United States since 2017.
5. Please provide detailed information on what federal response will inform ongoing local action or inaction in the states where these incidents took place and throughout the United States generally.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council. We would note that the United States of

America's Universal Periodic Review, rescheduled from May 2020, is imminent and should address these outstanding and serious concerns.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Given the seriousness of the matter, we believe that it requires the most serious attention on the part Your Excellency's Government, and would thus appreciate a response to this communication at your earliest convenience. For the same reason, we may publicly express our concern in this case. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Ahmed Reid
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Catalina Devandas-Aguilar
Special Rapporteur on the rights of persons with disabilities

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Chris Kwaja
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of
violating human rights and impeding the exercise of the right of peoples to self-
determination

Fernand de Varennes
Special Rapporteur on minority issues

Claudia Mahler
Independent Expert on the enjoyment of all human rights by older persons

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

Under Article 2 (1) of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the United States of America in 1992, the State has a duty to respect and ensure the rights enshrined in the Covenant to everyone within its jurisdiction without distinction of any kind. This obligation applies to all branches and levels of government (see General Comment no 31). In this regard, we refer also to Article 50 of the ICCPR, which provides, that the Covenant "shall extend to all parts of federal States without any limitations or exceptions", and to Article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.

Article 2 (3) of the Covenant enshrines the obligation of the State to provide effective remedies to victims of human rights violations. This entails a general duty to provide reparations, including restitution, compensation and just satisfaction for human rights violations. In addition, it provides a general duty to conduct effective investigations of alleged human rights violations with a view to prosecute and punish those responsible (General Comment no 31).

The right to life, as set forth in Article 3 of the Universal Declaration of Human Rights ("UDHR"); as well as in Article 6 of the ICCPR guarantees the right to life for all human beings, without distinction of any kind, including for persons detained or otherwise held in situations of deprivation of liberty. Consequently, everyone has the right to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death.¹ In addition, by depriving persons of their liberty, States assume responsibility to care for their life and bodily integrity. The duty to ensure the right to life entails a positive duty on the part of the State to take reasonable measures to prevent the deprivation of life by criminal acts, and to take all measures necessary prevent the arbitrary deprivation of life by their State agents. We also refer to the UN Code of Conduct for Law Enforcement Officials which provides, "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (Article 3). Reference is also made to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

The right to liberty and security of the person and to not be subjected to arbitrary detention is enshrined in articles 3 and 9 of the Universal Declaration, as well as article 9

¹ Human Rights Committee, General comment No. 36 (CCPR/C/GC/36):
https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

of the International Covenant on Civil and Political Rights. We would like to remind Your Excellency's Government that, under article 9(1) of the Covenant "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." The Working Group on arbitrary Detention noted, after its 2016 visit to the USA, the existence of racial disparities at all stages of the criminal justice system, "African Americans are more likely to be stopped and searched by law enforcement officers" and was concerned about the overrepresentation of African Americans detainees in the prisons it visited.²

Procedural guarantees protecting liberty and dignity of person may never be made subject to measures of derogation.

Recognizing that the individuals affected are members of ethnic minorities in the United States, we would also like to refer to the standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).

We further refer to Articles 2(2), 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, signed by the US in 1977, which recognize the right adequate and secure housing and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and specifies that these rights should be exercised without discrimination of any kind.

We also refer to, the Committee on the Elimination of Racial Discrimination (CERD relevant guidance in this matter, to which the United States is bound as a State party. CERD General recommendation No. 31 focuses on the prevention of racial discrimination in the administration and functioning of the criminal justice system. CERD General recommendation No. 34, regards racial discrimination against people of African descent. CERD General recommendation No. 13 focuses on the training of law enforcement officials in the protection of human rights. Each of these general recommendations is relevant to the issues surrounding the incidents alleged here and the protection obligations of United States.

We would also like to refer to the recommendations contained in the report of the Working Group of Experts on people of African descent to the United Nations Human Rights Council on its country visit to the United States (A/HRC/33/61/Add.2).³ In particular the Working Group recommends urgent action to ensure accountability for police violence against African Americans: by improving the reporting of violations

² A/HRC/36/37/Add.2, paras. 58 and 59.

³ See https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/61/Add.2

involving the excessive use of force and extrajudicial killings by the police, and ensuring that reported cases of excessive use of force are independently investigated; by ensuring that alleged perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions; by ensuring that investigations are re-opened when new evidence becomes available; and by ensuring that victims or their families are provided with remedies. The Working Group also calls for implementation of the recommendations in the final report of the President's Task Force on 21st Century Policing. The Working Group recommends that the Government step up its efforts to prevent excessive use of force by law enforcement officials by ensuring compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, of 1990.

We would also like to refer to the right to freedom of peaceful assembly as set forth in Article 20 of the Universal Declaration of Human Rights and in article 22 of the International Covenant on Civil and Political Rights (ICCPR), which the United States of America ratified on 8 June 1992. We would also like to refer to your Excellency's Government to article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression, and to Article 6(1) of the ICCPR, which recognizes that every human being has the right not to be arbitrarily deprived of his or her life.

We would like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/31/66), in which was stated that: "The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least 5 harmful means available), which is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat.

The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit" (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60). We would also like to appeal to your Excellency's Government to ensure that prompt, effective and thorough investigations are conducted into the alleged attacks on protestors following excessive use of force by police and that there is accountability for any violations including through the prosecution of perpetrators. Effective remedy (including compensation) should be guaranteed to the injured individuals. (A/HRC/31/66 Paras. 57, 58, 59 and 60)

We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms", and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force. (UN Basic Principles on the Use of Force and Firearms by Law Officials, Principle 4.) Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment, or even to torture (A/172/78, para. 62).

In his country visit report to the United States in 2016, the Special Rapporteur on the rights of peaceful assembly and of association, called upon the competent authorities to "...(d) Review tactics for the management of assemblies, including the use of military-style weapons and equipment by the police, the use of force and arbitrary arrests, to ensure their compatibility with international human rights norms and standards, including the joint report of the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66). In particular, ensure that management tactics are directed at facilitating rather than preventing the exercise of assembly rights and do not result in the escalation of tensions; e) Implement a more facilitative and collaborative approach to policing assemblies to encourage cooperation with and respect for organizers and non-discriminatory policing of protests by communities of colour; (f) Investigate and hold accountable police officers who use excessive force or display discriminatory behaviour when policing assemblies; (g) Recognize in law and in practice that the right to freedom of peaceful assembly is an individual right and that the violent actions of one person at a protest do not strip others of this right. When violence occurs, police should identify, isolate and deal with the individuals engaged in those acts, in accordance with the rule of law, and not indiscriminately arrest, detain or otherwise interfere with the rights of others; (h) Eliminate all federal programmes, such as the Department of Defence 1033 programme, which facilitate the transfer of military equipment to state and local law enforcement departments for use in policing peaceful assemblies;(k) Abandon the "broken windows" policing tactics that encourage racial discrimination and the systematic harassment of African Americans and other marginalized communities in the context of peaceful assemblies or otherwise." (A/HRC/35/28/Add.2 para 86 (d),(e),(f),(g),(h) and (k))

We should further like to refer to the right to equality and non-discrimination of demonstrators, in accordance with your Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, such as the one established in Article 5 (d) point vii. Council resolution 25/38 further urges States "...to avoid using force during peaceful protests and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force" (paragraphs 8 and 9).

Furthermore, we would like to refer to the right to freedom of opinion and expression in Article 19 of the ICCPR. In particular, we highlight that a “free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society” (General Comment 34). Consequently, the Human Rights Council resolution 25/38, calls upon States “...to pay particular attention to the safety of journalists and media workers covering peaceful protests, taking into account their specific role, exposure and vulnerability”. As expressed by the Human Rights Committee, “[j]ournalists are frequently subjected to [...] threats, intimidation and attacks because of their activities. [...] All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (General Comment no 34)