

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 the rights to freedom of peaceful assembly and of association; 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 Special Rapporteur on minority issues; the Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

REFERENCE:
AL USA 31/2020

7 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 the rights to freedom of peaceful assembly and of association; 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; Special Rapporteur on minority issues; Independent Expert on the enjoyment of all human rights by older persons; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 44/5, 45/24, 42/22, 44/10, 41/12, 42/16, 43/14, 44/8, 43/8, 42/12, 43/36 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of excessive use of force by the Philadelphia Police Department (PPD) in response to the Black Lives Matter protests that took place in the city of Philadelphia during May and June of 2020.

We wish to recall that, on 8 June 2020, a number of United Nations Special Procedures mandate holders issued a communication to your Excellency's Government concerning the protests that were being held at that time throughout the country, raising concerns at allegations of arbitrary arrests and detention; intimidation and harassment of journalists and protesters; and police violence against African-Americans (AL 13/2020).¹ On 16 October 2020, UN Special Procedures sent another communication concerning allegations of excessive use of force by law enforcement officials against peaceful protesters (AL 25/2020).²

We regret that, thus far, no reply was received to the two letters and we encourage your Excellency's Government to respond at its earliest convenience.

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25335>

² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25589>

At the same time, given that the allegations reported below concern the same issues than those raised in the above-mentioned communications, we take this opportunity to reiterate the recommendations formulated in the letters of June and October 2020, particularly in relation to the need for the US Government to comprehensively address racism against African-Americans; to urgently ensure accountability for police violence against African-Americans; and to afford victims and/or their families with effective remedies. It is critical for state and local authorities to heed these recommendations as well.

According to the information received:

On 30 May 2020, in the city of Philadelphia, at around 2:30 p.m., approximately three thousand peaceful demonstrators gathered outside the Philadelphia Museum of Art and began to walk towards the City Hall to protest against the killing of Mr. George Floyd. Among them were some individuals who spray-painted buildings and damaged police cars on the way.

By mid-afternoon, clashes erupted with the police, resulting in at least four police cars burned, stores in the area of Center City looted and approximately thirteen police officers injured. A group of protesters also surrounded the statue of former Philadelphia mayor and police commissioner, Mr. Frank Rizzo, located at Thomas Paine Plaza, attempting to pull it down and destroy it as a symbol of racism and police violence. Philadelphia's authorities ordered a curfew from 8 p.m. until 6 a.m.³ The mayor and other City officials attributed the commercial damage and fires to "outside agitators," and not to non-violent protestors.

The day after, on 31 May 2020, shortly after 2:00 p.m., police officers wearing SWAT gears, including body armours, helmets and shields, began to congregate at Philadelphia 52nd street commercial corridors. This is an area of the city known as the "West Philadelphia main street" or simply as the "Strip", which is home to many businesses, mainly owned by African-Americans. Until then, the neighbourhood of West Philadelphia had remained mostly peaceful and calm, with no reports of clashes as they had occurred the day before in Center City. As people could not understand such armed deployments of the police in the area, a small group of community members gathered on the scene to ascertain what was happening.

Among them was a group of approximately thirty children and adolescents, sixteen-years-old and under. They started to yell at the police and threw water bottles, stones and pieces of brick at police vehicles. In response, the police threw the water bottles and debris back at the children repeatedly, without attempting to disperse them peacefully. A nine-year-old girl was reportedly hit by a piece of cement thrown by an officer.

Witnessing this and in an attempt to protect the children, Ms. Michelle Rifken, a 41-year-old white woman, approached the police trying to defuse the tension.

³<https://www.nbcnews.com/news/us-news/blog/george-floyd-death-nationwide-protests-live-updates-n1219376/ncrd1219886#blogHeader>

A uniformed officer, however, suddenly ran towards her yelling to “back up!”. Ms. Rifken raised her hands up in the air and repeatedly asked which way to go. The officer forced her against the wall of a building and continued to scream for her to “back up!”. He then pepper sprayed her directly in the face. When Ms. Rifken was able to see again, she tried to seek help from other police officers. They, however, mocked and threatened her causing her to run away.

Meanwhile, through word of mouth and social media posts, community activists and West Philadelphia neighbourhood residents had been gathering around the so-called “Strip”, worried about what was happening. There continued to be no explanation as to why the police were massing in such riots gear in that area.

At approximately 4:00 p.m., an explosion was heard in the area, at the intersection between 52nd and Market streets, and smoke wafted over the so-called Elevated train line (the “EI”). Within ten minutes, a police helicopter reached the place and approximately one hundred fifty persons gathered at the scene.

In parallel, two blocks south 52nd street, between Sansom and Walnut streets, a group of approximately ten or fifteen men tried to break into the SunRay Pharmacy and King’s Men & Women apparel store. In response, the police fired tear gas into the stores and shot rubber bullets at all those who were there, including many who had reached the area only for the purpose of protecting the stores from looting and vandalism. There was reportedly no attempt to differentiate between those who were involved in violent acts and those who were attempting to protect the stores.

At approximately 4:40 p.m., police started to use tear gas in other areas on and near the 52nd street, causing a stampede. Protesters who tried to smother the tear gas canisters were reportedly shot with rubber bullets. Many residents of the area and other bystanders got caught in the crosshairs. According to witnesses, the police shot rubber bullets at an elderly African-American man twice, once on his hand and once on his leg. The man had not come there to protest; he was just on his way home. Likewise, an older woman, who was in the area that day to visit her niece, was also shot in the head. Police also allegedly shot at a taxi driver who had approached the woman to help her.

To assist and recover victims of the violence, a group of doctors and paramedics of a Philadelphia’s city medical collective, had set up an aid station at the intersection between 52nd and Locust streets. These medical personnel were clearly marked and deliberately dressed as paramedics. However, as they were providing aid, the police reportedly began to target them too. Members of the Collective were hit by rubber bullets and two young women medics were pepper-sprayed directly in the face, at close range, in spite of holding their hands in the air.

Journalists, and others who were trying to document the events, were also targeted. An independent journalist, for instance, was reportedly pepper-sprayed on Arch street after he asked a police officer for his badge number while filming him. Another journalist was reportedly hit twice in the head with rubber bullets.

She began bleeding from her face and had to be taken to the hospital. She was recording police actions. Another person, who was also trying to document the protests, was hit and injured by a rubber bullet as she was taking pictures of the police.

As tear gas spread throughout the air, people started to leave 52nd street, running towards small residential side streets around it. The police followed them, firing tear gas and shooting rubber bullets. Tear gas canisters landed in home yards and on family porches in the area. A mother was forced to shelter with her children in their bathroom after the hazardous gas invaded their home. Another family had to be evacuated by local doctors, who treated the children exposed to the gas.

Ms. Amelia Carter, a witness, was hit by tear gas four times as she tried to make her way home. When she arrived home, she could find no relief, due to the gas being everywhere inside the premises. Another witness, Ms. Audrey Hausig, reported that she felt the effects of the tear gas several blocks away from 52nd street, while she was playing with her children in the yard. According to Ms. Elaine Holton, another witness, no one had challenged or provoked the police; residents were just totally horrified and unsure of what could have caused such a violent response from them.

Later in the evening, on the northern end of the so-called “Strip”, some people had remained on the streets after the curfew. Among them was a group of approximately twenty-five residents and peaceful activists, playing music and dancing. SWAT officers and members of the National Guard reportedly arrived on the scene and started to harass and intimidate them, even stealing food from them and then throwing it in the trash. A long time Black Lives Matter (BLM) activist, Mr. Anthony Smith, was allegedly arrested, together with another person, and was then reportedly driven around in a police cruiser for several hours. He was released only at around 3:00 a.m. in a different neighbourhood, left alone in the street, at risk of being arrested again for curfew violations.

When the situation escalated, some of the protesters ran away. A small group of them tried to find shelter in a nearby house. Nine or ten SWAT officers reportedly chased them up to the porch of the house. As they could not find anyone there, they left. A witness, Ms. Johana Rahman, who suffered severe asthma, said that, after the officers left, when she tried to wash the pepper spray from her hair, this caused her to wheeze and cough uncontrollably. She became short of breath, until someone brought her an inhaler that likely saved her life.

The police presence in West Philadelphia continued until approximately 2:00 a.m.

31 May 2020 – neighbourhood of South Philadelphia

On the same night, while the police were using tear gas, pepper spray and rubber bullets in a predominantly African-American residential neighbourhood, dozens of white men who self-described as “vigilantes” gathered in the neighbourhood of South Philadelphia, an area predominantly inhabited by white people, at the

Target store, located at 1 Mifflin street. Their stated purpose was preventing break-ins like the ones they had seen reported from the previous night in Center City. They remained in the streets even after the curfew, without any reaction from the police who allegedly stood close by them.

Seeing the police allowing the “vigilantes” to stay out after the curfew, a group of African-American neighbourhood residents arrived at the Target store to ask why was that possible.

Arguments broke out between the two groups. The “vigilantes” began to shout at the African-Americans, asking what they were doing there, with the police reportedly watching without intervening. In the end, people were asked to disperse. However, the police still allowed a small group of “vigilantes” to remain. Officers reportedly talked to some of the “vigilantes” during the night and no one was sent back home or arrested.

1 June 2020 – Interstate 676

On 1 June 2020, at approximately 3 p.m., several hundred people gathered outside the headquarters of the Philadelphia Police Department (PPD), located at the intersection of 8th and Race streets, for a protest organized by the Party for Socialism and Liberation. At approximately 4:00 p.m., the group started to head towards the City Hall, and then marched in the direction of the Benjamin Franklin Parkway. Along the way, the group grew in size reaching nearly five thousand people.

From the Parkway, at approximately 5 p.m., several hundred protesters entered Interstate 676, a highway that cuts through Center City, blocking the traffic and prompting the temporary closure of the Benjamin Franklin Bridge. Some of them headed east towards a tunnel where the highway runs under 20th street. At the entrance of the tunnel, a state trooper vehicle was parked across part of the westbound lanes, leaving the remainder of the westbound lanes and the eastbound lanes unobstructed.

When protesters entered the tunnel, police officers in SWAT uniforms began pepper-spraying them, including those who fell to their knees and put their hands up. A video footage reportedly showed one officer walking down the elevated highway median, pepper-spraying everybody within range.⁴ According to witnesses, in at least one instance, an officer pulled down a protester’s mask and pepper-sprayed him in his face from inches away. Another protester reportedly fell to the ground but when others tried to help him, police officers physically prevented him to do so.

From the west, SWAT officers also moved in on the protesters, this time with armoured vehicles. In response, protesters knelt on the street, many with their hands in the air chanting “Hands up, don’t shoot!”. The police responded by

⁴ Christoph Koettl et al., *How the Philadelphia Police Tear-Gassed a Group of Trapped Protesters*, N.Y. TIMES:<https://www.nytimes.com/video/us/100000007174941/philadelphia-tear-gas-george-floyd-protests.html>

firing tear gas and using pepper spray, without giving warnings or trying to disperse people.

As a result, protesters on Interstate 676 found themselves cornered between the suffocating gas coming towards them from the west and the line of officers to their east. To the south, there was a high concrete wall separating the highway from the rest of the city. They therefore started heading towards the north, where the only option to escape was to climb a steep hill and attempt to scale an eight-foot-tall fence. According to witnesses, at least one officer encouraged protesters to flee that way. Many were injured in the process. For instance, Mr. George MacLeod suffered a dislocated arm.

Once people were on the hill, officers attacked them, causing a stampede. In particular, while protesters were trying to help each other to scale the tall fence at the top of the hill and protect those that fell down in the rush to escape, police officers shot rubber bullets and tear gas in their direction. Furthermore, although some protesters were able to climb over the fence and pass on the other side of it, officers forcefully dragged many of them down the hill and arrested them.

One protester, Mr. Ben Peifer, was reportedly hit in the knee by a rubber bullet, although he never entered the highway. Another one, Mr. Eric Lesko, said an officer shot at him and at a friend of his.

Protesters reported physical symptoms following the tear gas exposure, including nausea, cough, shortness of breath, and burning sensation. Some suffered from these symptoms for almost a week. Many also experienced anxiety and panic attacks.

Later in the day, the Philadelphia Police Commissioner released a statement declaring that SWAT officers gave numerous orders for the crowd to disperse, which the crowd did not comply with. The use of tear gas was a means to safely diffuse a volatile and dangerous situation and restore order when it became clear that other measures were ineffective in accomplishing that necessary objective. She assured communities that police would protect, preserve, and uphold every person's right to protest without, however, tolerating acts of violence and other criminal activities.⁵

The mayor of Philadelphia also released a statement on the same day stating that the use of tear gas during a demonstration was something he never wanted to witness. It was, however, a necessary decision because behaviours that endangered the lives of others, like traversing an open highway, could not be condoned. He also noted that several warnings were issued to disperse the crowd before tear gas was used.⁶

Subsequently, on 26 June 2020, both the Philadelphia Police Commissioner and the city's mayor publicly apologized for authorizing the use of tear gas and

⁵<https://www.phila.gov/2020-06-01-mayor-kenney-and-police-commissioner-danielle-outlaw-issue-statements-on-the-use-of-tear-gas/>

⁶ Ibid.

pepper spray on the protesters.⁷ The Police Commissioner said she was compelled to issue an apology after a video about the incidents was released by the New York Times.⁸ She also declared a moratorium on the use of tear gas for crowd control.

1 June 2020 – Fishtown area

While the above-mentioned events were taking place at the Interstate 676, dozens of white men, armed with baseball bats, metal pipes, axes, golf clubs and firearms, gathered outside the entrance of the 26th PPD headquarters on East Girard Avenue, in the Fishtown area of Philadelphia, to “protect” the neighbourhood. Police officers had allegedly warned them to come saying that “looters” were going to the area. Police officers were seen standing with these armed men, talking to them and even eating together. The group gradually swelled to approximately a hundred people.

A group of counter-protesters, affiliated with the BLM movement, gathered to oppose the white group’s presence. The two groups remained confronting themselves from the opposite sides of Girard Avenue with no contacts. Video footages reportedly showed armed white men shouting at BLM protesters that they were there because the “police can’t defend themselves” and that BLM protesters should leave and go somewhere else⁹. At approximately 5:15 p.m., a “neighbourhood defender” crossed the avenue, grabbed a BLM sign held by a woman, and ripped it up. Some of the armed men also reportedly assaulted a journalist who had been filming them, causing him injuries that required treatment at the hospital.

When BLM protesters sought protection from the white armed men, police blamed them for escalating the situation and eventually dispersed them. In a video published in a Philadelphia Inquirer article the next day, a police officer could reportedly be heard thanking a leader of the armed men group for the “support” given and for being “pro-police”.¹⁰ Also, videos posted on Twitter concerning the situation, reportedly showed an African-American man being taken into police custody for allegedly possessing an axe, after a “neighbourhood protector” chased him down the street and threw a bat at him.¹¹

On the same day and on the day after, 2 June 2020, a group of white men, some of whom reportedly carrying semi-automatic rifles, were also seen gathering near Aramingo and Castor avenues. The men went there to allegedly “protect” the neighbourhood from “looters”. When police officers arrived on the scene, they were seen taking pictures of the armed men, showing support to them.

⁷ <https://www.youtube.com/watch?v=iuXDagH7yT4>

⁸ <https://www.nytimes.com/video/us/100000007174941/philadelphia-tear-gas-george-floyd-protests.html>

⁹ <https://twitter.com/JohnnyAkzam/status/1267625413540544512>

¹⁰ Wendy Ruderman & Barbara Laker, ‘*Why Aren’t You Arresting Them?*’ *Philly Officials Investigate Police After Assaults Against Fishtown Protesters*:
<https://www.inquirer.com/news/philadelphia/philadelphia-fishtown-protester-vigilante-police-investigation-20200625.html>

¹¹ <https://twitter.com/jwehrens/status/1267606925035941890>; and
<https://twitter.com/jwehrens/status/1267606479848247296>.

Events at Marconi Plaza

Episodes of violence against anti-racism protesters continued to take place over several nights in mid-June at Marconi Plaza, located in the area of South Philadelphia.

Marconi Plaza has historically been a gathering place for members of the Italian-American community of Philadelphia. There are two statues there: one of Guglielmo Marconi, an Italian inventor and Nobel Laureate, and one of Christopher Columbus.

Starting on 13 June 2020, large groups of white people began to gather there identifying themselves as residents of South Philadelphia and “protectors” of the Christopher Columbus statue. These people were visibly armed, mainly with baseball bats and golf clubs.

A journalist, who attempted to record and interview some of these individuals, was physically assaulted by them and his bicycle was damaged. The police, who was reportedly present when the incident took place, did not intervene and subsequently told him to leave the area otherwise he would be charged with inciting a riot. Subsequently, the police commanding officer was transferred.¹²

Philadelphia city officials reacted to the story by condemning vigilantism and criticizing the police response.¹³ Nonetheless, for several nights, police officers responsible to keep order at Marconi Plaza reportedly allowed groups of white men to use violence.

On several occasions, police stood and watched them assaulting and beating anti-racism demonstrators, often with several “defenders” ganging up on a single protester. At other times, the police would stand in a line to separate the “defenders” and the anti-racism protesters but would not intervene when the “defenders” screamed threats, including death threats, and threw objects at the anti-racism protesters.

Mr. David Pashley, an anti-racism protester, was grabbed, choked, slammed to the ground and kicked by six “defenders”. This all happened in front of the police who did not intervene and did nothing to protect him. According to another anti-racism protester who had his nose broken in an attack carried against him by the “defenders”, not only police officers did not intervene to protect protesters, they actually encouraged violence between groups.

¹² <https://fusion.inquirer.com/news/south-philadelphia-police-captain-louis-campione-transferred-marconi-plaza-christopher-columbus-20200616.html>

¹³ <https://twitter.com/PhillyMayor/status/1272175272595423237>; and https://twitter.com/DA_LarryKrasner/status/1272209831441678336; as well as <https://fusion.inquirer.com/news/south-philadelphia-police-captain-louis-campione-transferred-marconi-plaza-christopher-columbus-20200616.html>

After days of tension and confrontations between groups, the police eventually forced anti-racism protesters to leave the park. Some “defenders”, however, were still allowed to remain.

History of police brutality in Philadelphia

The Philadelphia Police Department is reportedly known to have a racist police culture and has used violence targeted against African-American communities, often in concert with the Mayor’s leadership.

During Mr. Frank Rizzo’s tenure as Police Commissioner (1967–71), for example, in 1970, the PPD raided the headquarters of the Black Panthers, an African American group established to protect black neighbourhoods from acts of police brutality. Under Mr. Rizzo’s command, police threw tear gas into the offices, forcing members outside, and stripped them at gunpoint. Photographs of these young black men, whom the PPD arrested, appeared in newspapers across the country. In 1974, when Mr. Rizzo was Mayor (1972–80), Pennsylvania Crime Commission’s Report on Police Corruption and the Quality of Law Enforcement in Philadelphia concluded: “police corruption in Philadelphia is ongoing, widespread, systematic, and occurring at all levels of the police department. Corrupt practices were uncovered . . . in every police district and involved police officers ranging in rank from policeman to inspector.”

In 1979, the U.S. Department of Justice filed a civil rights lawsuit against the PPD alleging a range of violent, corrupt or illegal practices, including shooting non-violent suspects and using a “purposely fragmented system” for internal investigations of civilian complaints that rendered them inadequate.

Decade-long hostility between the PPD and MOVE, an African-American liberation group, exploded in 1985 when the PPD dropped two bombs on a rowhouse occupied by MOVE members in West Philadelphia. That year, Mayor Wilson Goode and Police Commissioner Gregore J. Sambor classified MOVE as a terrorist organisation. Police Commissioner Sambor stopped the fire department from extinguishing the fire, which spread and burned three city blocks. This bombing took place less than a mile away from the police attacks on 52nd Street that would occur thirty-five years later on 31 May 2020, described below.

In 2009, the black police officers’ league sued the PPD over www.domelights.com, the police department’s racist message board. In 2019, the Plain View Project, launched by Philadelphia attorneys, exposed racist and violent public Facebook posts by over 300 active duty PPD officers, including command staff.

Between 2007 and 2014, 80% of the 394 shootings involving PPD officers was directed at African-Americans.

International reactions to the 2020 nation-wide protests

On 1 June 2020, the President of the Parliamentary Assembly of the Organisation for Security and Cooperation in Europe (OSCE) issued a statement emphasizing that the police had a duty to exercise restraint and to respect the rights of citizens voicing their grievances. Especially considering that the protests were motivated by anger over police brutality and the death of Mr. George Floyd, overzealous policing of demonstrations only served to fuel anger and could lead to more violence and unrest. Rather than responding with force, it was important that authorities listened to the message of the protesters, particularly their demands for accountability and for an end to violent policing tactics, especially in minority communities.¹⁴

On the same day, the OSCE Representative on Freedom of the Media expressed his concern at the wave of violence against journalists covering the protests of those days. Many of the incidents reported involved arrests and the use of force by police, including rubber bullets, pepper bullets, tear gas and pepper spray, as well as acts of violence by protesters. He called on the authorities to exercise restraint and to ensure that journalists could work safely while reporting on public protests.¹⁵

On 3 June 2020, the United Nations High Commissioner for Human Rights issued a statement noting that there were credible reports of unnecessary and disproportionate use of force by law enforcement officers, including indiscriminate and improper use of less-lethal weapons and ammunition. Tear gas had also been used to disperse peaceful demonstrators and rubber bullets and pepper balls had been fired at demonstrators and journalists who did not pose an imminent threat of serious injury. The High Commissioner called for independent, impartial and transparent investigations and for a profound examination of a wide range of issues, including socio-economic factors and deep-seated discrimination affecting African-Americans.¹⁶

Subsequently, on 5 June 2020, a group of United Nations Special Procedures jointly called on the US Government to take decisive action to address systemic racism and racial bias in the country's criminal justice system by launching independent investigations and ensuring accountability in all cases of excessive use of force by police.¹⁷ They also issued another statement voicing serious concern at the response of the authorities to the protests; calling for urgent reparative intervention for historical and contemporary racial injustices.¹⁸

On 10 June 2020, another joint statement was issued by a group of Special Procedures condemning the militarization of the police, and the violent crackdown against peaceful protesters.¹⁹ On the same day, the United Nations

¹⁴ <https://www.osce.org/parliamentary-assembly/453471>

¹⁵ <https://www.osce.org/representative-on-freedom-of-media/453459>

¹⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25922&LangID=E>

¹⁷ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25933>

¹⁸ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25927&LangID=E>

¹⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25948&LangID=E>

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights (IACHR) also condemned the use of force against journalists covering the protests.²⁰

On 12 June 2020, the Committee on the Elimination of Racial Discrimination (CERD) issued a statement expressing alarm, among others, at the recurrence of and impunity for police killings of people of African descent in the US; expressing concern for continuing practices of racial profiling and police brutality against racial and ethnic minorities; and for the excessive use of force by law enforcement officials against peaceful anti-racism protestors. The CERD pointed that the events of May-June 2020 were a matter of systemic and structural discrimination that permeated State institutions and disproportionately promoted racial disparities against African-Americans, notably in the enjoyment of the rights to equal treatment before the tribunals, security of person and protection against violence or bodily harm, and other civil, economic, social and cultural rights.²¹

On 17 June 2020, the Human Rights Council held an urgent debate on racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests. On that occasion, the Special Procedures issued a statement noting that the predominant analysis of police violence in the US, in the context of the protests of May-June 2020, was not limited to specific enforcement practices or individual officers but extended to the very framework of law and policy that governed law enforcement. Nevertheless, the predominant messaging from the US administration had been to deny the existence of systemic racism in law enforcement, a response that re-enacted the very injustices that had driven people into the streets in the first place.²²

Following the urgent debate, on 30 June 2020, the Council adopted, without a vote, resolution 43/1 where it “strongly condemn[ed] the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent, in particular which led to the death of George Floyd on 25 May 2020 in Minnesota (...) and the deaths of other people of African descent, and also condemn[ed] the structural racism in the criminal justice system.”²³

On 24 July 2020, the Office of the High Commissioner for Human Rights stated that peaceful demonstrations had to be able to continue without those participating in them, including journalists, risking arbitrary arrest or detention, being subject to unnecessary, disproportionate or discriminatory use of force, or suffering other violations of their rights. Police had to use force only when necessary, and in accordance with international standards; victims of unnecessary or excessive use of force had the right to remedy; and those responsible of any violation had to be held accountable.²⁴

²⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25946&LangID=E>

²¹ <https://www.ohchr.org/Documents/HRBodies/CERD/earlywarning/statements/USA.PDF>

²² <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E>

²³ <https://undocs.org/A/HRC/RES/43/1>

²⁴ <https://news.un.org/en/story/2020/07/1068971>

On 8 August 2020, the Inter-American Commission on Human Rights (IACHR) called on the US to make progress with structural reforms in its security and justice systems. The Commission urged the authorities to make those reforms a central axis of transformation in eradicating institutional racism present in the actions of law enforcement authorities, as well as in the operation of the justice system, which had a disproportionate impact to the detriment of Afro-descendant persons.²⁵

While we do not wish to prejudge the accuracy of information received, we wish to express our utmost concern at the above-mentioned allegations which, if confirmed, could be in violation of the right to life, protected by article 6 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America in 1992; the right to liberty and security of the person (article 9); the right to equality and non-discrimination (article 26); the right of peaceful assembly (article 21); the right to freedom of expression, including freedom of the press to report on events without intimidation or harassment (article 19); the right to be protected against arbitrary interference with the home (article 17) and the right to effective remedies (article 2), including the State' duty to conduct effective investigations into alleged human rights violations with a view to identify, prosecute and punish those responsible, as appropriate.

We emphasize that any use of force by security forces must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination²⁶ and must be strictly regulated in accordance with applicable international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials²⁷ and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.²⁸ We are concerned that the US legal framework for police use of force does not comply with the international standards of necessity and proportionality since it is governed instead by the principle of reasonableness and the doctrine of qualified immunity. The principle of reasonableness permits law enforcement officers to use lethal force where it is “reasonable” to do so.²⁹ The doctrine of qualified immunity shields police from being sued except under the most narrow of circumstances. As such the US legal framework for police use of force violates international standards.

The use of less-lethal weapons - as for conventional firearms - must be restricted to situations of necessity and in proportion to the associated risks. In other words, the force used must be the very minimum required under the circumstances at hand. The use of these weapons may amount to torture or ill-treatment if it is not “proportionate to the aim pursued, namely to disperse a non-peaceful gathering” and depending on the resulting injuries.

²⁵ https://www.oas.org/en/iachr/media_center/PReleases/2020/196.asp

²⁶ See also, *mutatis mutandis*, Special Rapporteur on extrajudicial, arbitrary or summary executions, Human Rights Dispatch No. 1: Police use of force and lethal force in a state of emergency: <https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

²⁷ <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

²⁸ https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

²⁹ <https://www.tandfonline.com/doi/full/10.1080/13642987.2018.1495196>

States must promote an enabling environment for the exercise of the right of peaceful assembly without discrimination and must put in place a legal and institutional framework so that this right can be exercised effectively, particularly by those who are members of groups that are or have been subjected to discrimination.³⁰ States must also protect participants in peaceful assemblies against possible abuse by non-State actors, such as interference or violence caused by other members of the public and/or counterdemonstrators. They must, in fact, take a content-neutral approach to counterdemonstrations.³¹ We therefore stress that authorities should investigate any possible collusion between law enforcement agents and “vigilantes” groups; clearly condemn any form of tacit or explicit support afforded by the police to these groups and take all appropriate measures to ensure that no double standards are tolerated when policing peaceful assemblies, particularly as these may be based on prohibited discriminatory grounds.

Journalists and others involved in monitoring or reporting on assemblies should not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment and, even if an assembly is declared unlawful or is dispersed, that does not invalidate their right to monitor. Similarly, adequate protection must be ensured to medical personnel.³² Intentionally targeting media crew, medical or paramedical personnel, and firing rubber bullets at the face or spraying gas directly at a protester violates international law. They are also acts of cruelty that should have no place in any police force.

We acknowledge that there is not always a clear dividing line between assemblies that are peaceful and those that are not, and that there may be outside elements taking advantage of peaceful demonstrations to engage in violent acts such as looting, damage of property or directed at police. We stress, however, that the question of whether or not an assembly is peaceful must be carefully determined with reference to the violence that originates from the participants, and its level. Violence against participants by the authorities or by participants in counterdemonstrations does not render the assembly non-peaceful. The conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants were inciting others to use violence, and such actions were likely to cause violence; that the participants had violent intentions and planned to act on them; or that violence on their part was imminent. Isolated instances of violent conducts do not suffice to taint an entire assembly as non-peaceful.³³

Where the presence of law enforcement officials is required, the policing of an assembly should be planned and conducted with the objective of enabling the assembly to take place as intended, and with a view to minimizing the potential for injury to any person and damage to property. Clear command structures must exist to underpin

³⁰ Human Rights Committee, General Comment n. 37 (CCPR/C/GC/36) on the right of peaceful assembly (Article 21):
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPPRiCAqhKb7yhsrdB0H115979OVGGb%2bWPAXj3%2bho0P51AAHSqSubYW2%2fRxcFiagfuwxycuvi40wJfdPLI9%2fecedWBX%2fj2tgqDXgdjqx8wTKKbloySyDPtsMO>

³¹ Ibid.

³² Ibid.

³³ Ibid.

accountability, as must protocols for recording and documenting events.³⁴ Superior officers should be held accountable “if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.”³⁵

We wish to reiterate that law enforcement officials should seek to de-escalate situations that might result in violence. They must exhaust all non-violent means before, and give prior clear warning if the use of force becomes absolutely necessary. Only in exceptional cases may an assembly be dispersed, when, for instance, it is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be addressed by more proportionate measures. When the decision to disperse is taken, force should be avoided. Where that is not possible, only the minimum force necessary to that objective may be used. Where law enforcement officials are prepared to use of force, or violence is considered likely, authorities must also ensure that adequate medical facilities are available.³⁶

Less-lethal weapons should not be used in situations of crowd control, especially in situations involving the exercise of the right to peaceful assembly. Such weapons should be used only as a measure of last resort, following a verbal warning, and with adequate opportunity for assembly participants to disperse. When less-lethal weapons are used, all reasonable efforts should be made to limit risks, such as causing a stampede or harming bystanders.³⁷

In this regard, we stress that it is not always possible to draw a clear line between lethal and non-lethal weapons, and that less-lethal weapons may have indiscriminate effects. For example, even though tear gas is not in principle a lethal weapon, when used inappropriately, it can cause serious injuries or even death. Likewise, tear gas canister, if used incorrectly, can become lethal weapons or cause serious harm to protesters.³⁸ In addition, teargassing of residential areas and homes, resulting in harm to residents within their homes, clearly oversteps the proportionate use of tear gas and violates the rights to health and adequate housing, particularly insofar as the protection of everyone against arbitrary interference with her or his home is concerned.

Accordingly, we support calls that have been made for the use of tear-gas to be prohibited in the management of assemblies.³⁹

³⁴ Ibid.

³⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 24, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

³⁶ Ibid.

³⁷ Ibid.

³⁸ Inter-American Commission on Human Rights, special Rapporteur on Freedom for Expression, Protest and Human Rights: <http://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> ; as well as Amnesty International, Global use of tear gas fuels police abuses: <https://www.amnestyusa.org/press-releases/toxic-trade-in-tear-gas-fuels-police-abuses>; and <https://teargas.amnesty.org/#whats-inside>.

³⁹ University of Toronto, Faculty of Law, The Problematic Legality of Tear Gas Under International Human Rights Law: <https://ihrp.law.utoronto.ca/sites/default/files/media/Legality%20of%20Teargas%20-%20Aug25%20V2.pdf>

Lastly, we underline that any allegation of unlawful use of force or other violations by law enforcement officials in the context of assemblies, must be investigated effectively, impartially and in a timely manner. Victims must be involved and kept updated on the status of such investigations and effective remedies to seek and obtain redress, including adequate compensation, as appropriate, must be made available to them.⁴⁰ Those using force, and their commanding officers, must be accountable for each use of force. Any use of force should, in fact, be recorded and reflected in a transparent report. Such report should contain sufficient information to establish whether the use of force was necessary and proportionate, including the reasons why force was used, its effectiveness and the consequences of it.⁴¹

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 also provide detailed information on whether the use of force by law enforcement officials in the context of the above-mentioned demonstrations in Philadelphia was in compliance with the requirements of legality, necessity and proportionality. Please explain what measures were taken to ensure adequate protection of protestors's right to life and the rights to freedom of opinion and of peaceful assembly.
3. Please provide information on health and environmental assessments on the chemicals allegedly used by law enforcement officials during the demonstrations. Also, please provide the policy governing the use of "less lethal" weapons in Philadelphia and provide information on how and why it is compatible with the international human rights obligations of the Commonwealth of Pennsylvania and the United States. Has Philadelphia continued its moratorium on the use of tear gas?
4. Please provide detailed and updated information on whether any investigation was launched into the above-mentioned events in Philadelphia, what steps were taken to ensure its independence, what is its current status and/or whether there has been any result in terms of accountability, including disciplinary or prosecutorial action, of any person responsible, including superior officers; as well as with regard to victims' right to effective remedies, including compensation. If no investigation was undertaken, or there was no result from it, please provide information on the reasons why and explain how this is compatible with the international human rights obligations of the Commonwealth of Pennsylvania and the United States.

⁴⁰ Ibid.

⁴¹ GC n. 37

5. Please provide detailed information on the number of people arrested during the above-mentioned events in Philadelphia, the charges brought against them and their current status. Please include specific information concerning access to legal assistance and contact with their families.
6. Please provide detailed information on whether city officials in Philadelphia have issued a formal apology for the violence on 31 May 2020 against protestors and residents in West Philadelphia.
7. What steps did officials of Philadelphia and Pennsylvania take to ensure that protestors and residents received medical treatment during the above-mentioned events in Philadelphia and to protect medics attempting to provide aid? What steps have officials taken since that time to ensure that medics are protected should there be any future demonstrations?
8. What steps have officials of Philadelphia and Pennsylvania taken to prevent vigilante groups from engaging in purported “policing” within the city and Commonwealth? Were any members of vigilante groups arrested during the above-mentioned events in Philadelphia for violence against residents and protestors? If so, how many and on what charges?
9. Has there been any investigation into whether law enforcement officials treated vigilante groups differently than Black Lives Matter protestors and residents in African-American neighbourhoods and, if so, what is the status of the investigation and its conclusions? If there has been no investigation, why not?
10. Who coordinated the police efforts on 31 May 2020? Why were SWAT teams, including tanks, present on 52nd Street on that day? Why did law enforcement officials gather at that spot? Who authorized the use of tanks, pepper spray, tear gas and rubber bullets and why?
11. Please explain whether any step was undertaken or is envisaged to be undertaken to independently investigate the anti-racism protests held at national level as a whole, including and beyond the above-mentioned events in Philadelphia, particularly for the purpose of assessing whether there existed a nationwide pattern of excessive use of force by law enforcement officials, and other human rights violations, in handling such demonstrations. If no such inquiry was conducted, please explain the reasons why and how this is compatible with the United States’ international human rights obligations.
12. Please provide detailed information on steps taken to prevent future instances of excessive use of force by law enforcement officials including, for instance, trainings on the lawful use of force and the policing of protests. Please also provide information on measures taken to ensure that legislative provisions, at State and local governments

levels, regulating the use of force by law enforcement officials, are in line with international human rights standards.

13. Please provide information on measures taken or envisaged to be adopted to facilitate and improve victims' reporting of cases involving excessive use of force by law enforcement officials and strengthen independent oversight of, and accountability for such cases. Please also provide information on measures in place or envisaged to be adopted to ensure that law enforcement officials, and their commanding officers, found responsible for disproportionate use of force do not continue to work in law enforcement contexts.
14. Please provide information on any initiative undertaken or envisaged to be undertaken by the Government of the United States for the establishment of truth-telling processes in order to facilitate dialogue and discussion between communities, with a view to addressing historical and contemporary issues relating to people of African descent, including on such issues as accountability and reparatory justice, as a step towards eradicating racism, racial discrimination, xenophobia and related intolerance against them. Please describe any such processes undertaken in Philadelphia or the Commonwealth of Pennsylvania.
15. Please provide information on measures taken or envisaged by the City of Philadelphia to withdraw from the Department of Defence 1033 programme.

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.

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.

While the information at hand is by no means exhaustive, it is sufficiently credible to indicate a series of inter-related concerns that warrant serious and undivided attention. For this reason, we may consider to publicly express our concerns. We also believe that it is a matter of public interest that these issues are clarified to the full extent possible, as they have wide ranging implications for the exercise of the most fundamental civil liberties. 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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Dominique Day
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

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

Tlaleng Mofokeng
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

Fernand de Varennes
Special Rapporteur on minority issues

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

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

Marcos A. Orellana
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the following international norms and standards.

Under Article 2 (1) of the ICCPR, 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).⁴² 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. In addition, it provides a general duty to conduct effective investigations on 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. The Human Rights Committee has indicated that the obligation under Article 6 "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life" (CCPR/C/GC/36 para. 7).⁴³ This obligation entails taking all necessary measures to prevent arbitrary deprivations of life, including in law enforcement contexts. The notion of arbitrariness in Article 6 includes elements of "inappropriateness, injustice, lack of predictability, and due process of law as well as elements of reasonableness, necessity, and proportionality", (Ibid. para 12). These measures include the adoption of appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life, mandatory reporting, review, and investigation of lethal incidents and other life-threatening incidents, and the supplying of forces responsible for crowd control with effective "less-lethal" means and adequate protective equipment in order to obviate their need to resort to lethal force (Id. para. 13).

⁴² Human Rights Committee, General Comment n. 31 (CCPR/C/21/Rev.1/Add. 13) on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQGVHA%3D%3D>

⁴³<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H115979OvGGB%2bWPAXhNI9e0rX3cJmWwe%2fGBLmVrGmT01On6KBQgqmxPNIjrLLdefuuQijN19BgOr%2fS93rKPWbCbgoJ4dRgDoh%2fXgwn>

Any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability, even under a state of emergency.⁴⁴ The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat. Even less lethal weapons must be employed only when they are subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be or are clearly ineffective to address the threat.

While less-lethal weapons could allow officials to apply varying degrees of force in situations where it would be unlawful to use firearms loaded with lethal ammunition, they may however be easily misused or abused. We therefore wish to refer your Excellency's Government to the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) aimed at ensuring that only appropriate force is used, if force is to be used at all.⁴⁵

According to the Guidance training law enforcement officials, equipping them with adequate protective equipment and an appropriate range of less-lethal weapons, and making these officials available are essential precautionary measures if unnecessary or excessive harm is to be prevented. Furthermore, law enforcement policies, instructions and operations must give special consideration to those who are particularly vulnerable to the harmful consequences of the use of force in general and to the effects of specific less lethal weapons. In this connection we would like to remind your Excellency's Government that the reported teargassing of residential areas and homes, resulting in harm to residents within their homes should not only be considered as a disproportionate use of force by security officials, but violates as well the protection of everyone against arbitrary interference with his or her home as set out in article 17 of the ICCPR and the rights to adequate housing and the highest attainable standards of physical and mental health enshrined in articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. It should be noted that the right to adequate housing under international human rights law comprises more than just having a roof above ones head, it encompasses the fundamental right to live in safety, peace and dignity in a home.

Where death or injury is caused by the use of a less-lethal weapon or related equipment by a law enforcement official, the incident shall be reported promptly to the official's superiors. All deaths and injuries resulting from the use of less-lethal weapons or related equipment, and not only where they result from an apparently or potentially unlawful use of force, should be reported without delay to a judicial or other competent authority. This independent authority shall be mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases.

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, endorsed also by the Human Rights Committee, which provides that, "Law

⁴⁴ Special Rapporteur on extrajudicial, arbitrary or summary executions, Human Rights Dispatch No. 1: Police use of force and lethal force in a state of emergency: <https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

⁴⁵ https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

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.

In addition, with regard to the use of force by law enforcement officials, we would like to recall Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right to the highest attainable standard of physical and mental health. The right to a standard of living adequate for the health and well-being is also guaranteed under 25 of the UDHR, with regard to individual’s social and environmental conditions, including concerning medical care and necessary social services, and the right to security in the event of circumstances beyond his control. Furthermore, we would like to recall the duty of all States to prevent exposure to toxics and otherwise hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). The existence of the State’s duty to prevent exposure is reinforced by the right of everyone to physical integrity of their body (see A/HRC/39/48).

We would also like to refer the State to its obligation to combat all forms of racial discrimination. Under article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by the United States of America in 1994, States parties have the obligation to condemn and eliminate racial discrimination in all its forms. To this end, States parties undertake to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions act in conformity with this obligation. According to article 5 of ICERD, States parties should guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably the enjoyment of the right to security of person and protection by the State. We also refer to, the Committee on the Elimination of Racial Discrimination (CERD) relevant guidance in this matter. 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, addresses 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 human rights obligations of the United States.

We would also 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),⁴⁶ in which it is 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

⁴⁶ <https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SpecialProject.aspx>

necessary in the circumstances (the least 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).”

With regards to the right to security of person as set forth in Article 9(1) of the ICCPR, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Human Rights Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury”. Furthermore, we would like to recall that “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).

We would like to bring to the attention of your Excellency’s Government General Comment 37 of the Human Rights Committee, which recognizes that the right to peaceful assembly “constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. [W]here they are used to air grievances, peaceful assemblies may create opportunities for inclusive, participatory and peaceful resolution of differences.” (CCPR/C/GC/37, para 1). In this regard, the Human Rights Council has stressed “that peaceful protests should not be viewed as a threat, and therefore encouraging all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes” (A/HRC/RES/44/20).

We remind your Excellency’s Government that the right of peaceful assembly can only be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others” (Human Rights Council Resolution 15/21). While the “interests of national security” may serve as a ground for restrictions, the suppression of the right of peaceful assembly cannot be used to justify restrictions on this ground (CCPR/C/GC/37, para 42).

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. According to this provision, States parties should ensure the protection of the right to freedom of peaceful assembly and association without distinction as to race, colour, or national or ethnic origin. 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).

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 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). In particular the Working Group recommends 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, 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.